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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 16.04.2019

Pronounced on: 25.04.2019

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LPA 184/2019 & CM APPL. No. 12369/2019

UNION OF INDIA & ORS

.... Appellants

Through: Mr. Tushar Mehta, SG with
Ms. Maninder Acharya, ASG,
Mr. Ripu Daman Singh Bhardwaj,
CGSC with Ms. Hina Bhargava,
Mr. N.K. Singh (Joint Secretary) &
Ms. Veena Kumari, Director for
Ministry of Mines.

versus

M/S RVG METALS & ALLOYS PVT LTD

..... Respondent

Through: Mr. Dhruv Mehta, Sr. Adv. with
Mr. Aman Vachher, Mr. Yashraj,
Mr. Saket Sikri, Mr. Ashutosh Dubey,
Mr. Abhishek Chauhan, Mr. Shyam
Agarwal & Mr. Arun Nagar, Advs.

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LPA 185/2019 & CM APPL. Nos. 12384/2019 & 18118/2019

UNION OF INDIA & ORS

..... Appellants

Through: Mr. Tushar Mehta, SG with
Ms. Maninder Acharya, ASG,
Mr. Ripu Daman Singh Bhardwaj,
CGSC with Ms. Hina Bhargava,
Mr. N.K. Singh (Joint Secretary) &
Ms. Veena Kumari, Director for
Ministry of Mines.

versus

M/S STANDARD METALLOYS PVT LTD

..... Respondent

Through: Mr. Dhruv Mehta, Sr. Adv. with
Mr. Aman Vachher, Mr. Yashraj,

Mr.Saket Sikri, Mr. Ashutosh Dubey,
Mr. Abhishek Chauhan, Mr. Shyam
Agarwal & Mr. Arun Nagar, Advs.

+ LPA 200/2019 & CM APPL. No. 13106/2019

UNION OF INDIA & ORS

..... Appellants

Through: Mr. Tushar Mehta, SG with
Ms.Maninder Acharya, ASG,
Mr.Ripu Daman Singh Bhardwaj,
CGSC with Ms. Hina Bhargava,
Mr.N.K. Singh (Joint Secretary) &
Ms. Veena Kumari, Director for
Ministry of Mines.

versus

M/S RVG MINERALS & METALS PVT LTD Respondent

Through: Mr. Dhruv Mehta, Sr. Adv. with
Mr.Aman Vachher, Mr. Yashraj,
Mr.Saket Sikri, Mr. Ashutosh Dubey,
Mr. Abhishek Chauhan, Mr. Shyam
Agarwal & Mr. Arun Nagar, Advs.

+ LPA 202/2019 & CM APPL. No. 13147/2019

UNION OF INDIA & ORS

..... Appellants

Through: Mr. Tushar Mehta, SG with
Ms.Maninder Acharya, ASG,
Mr.Ripu Daman Singh Bhardwaj,
CGSC with Ms. Hina Bhargava,
Mr.N.K. Singh (Joint Secretary) &
Ms. Veena Kumari, Director for
Ministry of Mines.

versus

M/S APEX METALLOYS PVT LTD

..... Respondent

Through: Mr. Dhruv Mehta, Sr. Adv. with
Mr.Aman Vachher, Mr. Yashraj,
Mr.Saket Sikri, Mr. Ashutosh Dubey,
Mr. Abhishek Chauhan, Mr. Shyam
Agarwal & Mr. Arun Nagar, Advs.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

RAJENDRA MENON, CHIEF JUSTICE

1. Taking exception to a common judgment passed on 06.02.2019 by the writ court (Single Bench) in W.P.(C) 7537/2018 titled *M/s Standard Metalloys Pvt. Ltd. vs. Union of India and Ors.*, W.P.(C) 7553/2018 titled *M/s RVG Minerals and Metals Pvt. Ltd. vs. Union of India and Ors.*, W.P.(C) 7555/2018 titled *M/s RVG Metals and Alloys Pvt. Ltd. vs. Union of India and Ors.* and W.P.(C) 7591/2018 titled *M/s Apex Metalloys Pvt. Ltd. vs. Union of India and Ors.*, these appeals have been filed under Clause 10 of the Letters Patent. As facts and questions of law are common and identical in nature, therefore all the four appeals are being disposed of by this common judgment.
2. The original writ petitioners challenged an order dated 30.06.2016 passed by Controller General, Indian Bureau of Mines (IBM)/appellant No.2 in his capacity as the Administering Authority exercising statutory jurisdiction under the Offshore Areas Mining (Development and Regulation) Act, 2002 (hereinafter referred to as the "OAMDR Act"). All the facts relevant with regard to the issue have been dealt with in-extenso by the learned Single Judge from paras 4 to 8 of the impugned judgment and it is not necessary to dwell into them in detail.
3. Before considering the matter on merits, it is necessary to decide CM No.18118/2019, which is an application for impleadment filed in LPA No.185/2019 by M/s Trimax Sand Pvt. Ltd. The appeals were filed on 05.03.2019. They came-up for hearing before us on 18.03.2019 and on the

request made by the counsel representing the appellants we adjourned the matters to 25.03.2019. On 25.03.2019, as the Bench could not assemble, the cases were adjourned to 29.03.2019. On 29.03.2019 notices were issued; interim order passed, parties were directed to file submissions or affidavit, if advised, and the matters were listed on 08.04.2019. The matters were partly heard on 08.04.2019 and thereafter further arguments were to be heard on 16.04.2019. When the matters were taken up on 16.04.2019, it is seen that the aforesaid impleadment application had been filed, a day before i.e. on 15.04.2019. This impleadment application indicates that it has been filed by way of abundant caution and the applicant seeks impleadment on the ground that certain orders passed on 09.11.2017 in W.P.(C) No.5734/2016 at the instance of the appellants are pending consideration in an SLP pending before the Hon'ble Supreme Court, being SLP No.2348/2018. Arguments in the same have been heard and on 08.04.2019 the matter has been reserved for orders. However, the fact remains that on 09.11.2017, W.P.(C) No.5734/2016 was disposed of by the Bench on the basis of certain statement made by the counsel representing the Union of India before the Bench. Thereafter, a review application was filed and the review application is pending before the Single Judge. Be that as it may, the learned writ court, in the impugned order passed on 06.02.2019 in these appeals, had taken note of the order dated 09.11.2017 passed in W.P.(C) No.5734/2016 and has observed that the said writ petition was not decided on merits, was disposed of based on certain statements made by the learned ASG for the Department and as a review application (R.P. 103/2018) is pending, and now, the present writ petitions are being decided on merits. Once the writ petitions have been decided on merits, in our considered view, even Review Pet. No.103/2018

may have been rendered infructuous. However, we do not wish to make any comment on the same as we are informed that Review Pet. No.103/2018 is pending before the Division Bench and once the issue is being decided on merits, we need not take note of these factors. That apart, the other grounds raised in the application for impleadment are nothing but the grounds on merits with regard to the impugned order, which are also the grounds raised by the Union of India in the present appeal and the applicant/Intervener, who was not even a party before the writ court and who did not even bother to challenge the order of the writ court after it was rendered on 06.02.2019, cannot, now be permitted to participate in the proceedings when the matter is being heard.

4. It may also be taken note of that the applicant/Trimax never took part in the process of selection in pursuance to the notification dated 07.06.2010. That being so, they cannot have any grievance with regard to the said selection process, however, in the grounds raised it is stated by them that they were licensees of Beach-Sand Mining. They were granted the licence in the year 2001 and also lease for granite in Shirakkulam deposit, Andhra Pradesh. They claim to have invested a huge amount in this project and it is their contention that if the project in question is revived, it would adversely affect their project and therefore they be impleaded as party. Apart from the fact that this cannot be a ground for impleadment, from the written submission brought on record by the respondents, we find that even the lease granted to Trimax/the applicant has been cancelled by the State of Andhra Pradesh on 28.11.2018 and the issue is sub-judice in the High Court of Andhra Pradesh. Taking note of all these circumstances and the fact that the grounds on merit raised in the application have already been canvassed

before us by the appellant Department, we see no reason to allow the application. In our considered view, the application has been filed only to delay the proceedings. Accordingly, CM No.18118/2019 is dismissed.

5. After enforcement of the OAMDR Act and in terms of the mandate of Section 10(1) of the said Act, the Administering Authority, namely, the Controller General, IBM (as he was known at the relevant time) issued a notification on 07.06.2010 inviting applications for grant of exploration licence for 62 blocks, out of which 26 were in the Bay of Bengal and 37 in the Arabian Sea. The said blocks were identified by latitudes and longitudes. Wide publicity was given by the statutory authority, both in the print and the electronic media, with regard to the aforesaid notification inviting applications. Consequent thereto, 53 parties applied for allotment of various blocks for grant of exploration licence for one or more of the notified blocks. The respondents in the present appeal had also applied for grant of exploration licence over certain blocks. The administrative authority, with an intent to make the process fair and transparent, constituted a Screening Committee consisting of a technical expert from the Indian Institute of Oceanography, Goa, one technical expert from Geological Survey of India, Kolkata and another technical expert from Indian Bureau of Mines, Nagpur. Based on the criteria provided under Section 12 of the OAMDR Act, the said Screening Committee scrutinized the applications and gave its recommendation with regard to allotment to the Administering Authority, who in turn, pursuant thereto published the list of selected applicants on 22.03.2011; and consequently vide letter dated 05.04.2011 communicated the grant of exploration licence to each of the successful applicants.

6. The said process of selection and the action taken for grant of exploration licence was subjected to challenge in W.P.(C) No.1502/2011 before the High Court of Bombay, Nagpur Bench. Similarly, petitions were also filed before various other High Courts challenging the selection process and the grant made. In the backdrop of the aforesaid proceedings initiated before various High Courts and certain orders passed therein, exploration licence were not granted by the Administering Authority as he was awaiting outcome of these proceedings.

7. The writ petition filed before the Nagpur Bench of the Bombay High Court came to be dismissed on 17.09.2013 by a detailed judgment running into more than 50 pages. The High Court upheld the entire selection process, including the criteria adopted for selection. In fact, in the petition before the Nagpur Bench of the Bombay High Court, the selection process and the criteria adopted were subject matter of challenge by the petitioners. The Central Government, the department concerned and the statutory authority opposed the challenge and categorically came-out with a case that the selection process was transparent, in accordance with law and the criteria laid down were also in accordance to the requirements of the statute. In fact, all authorities defended the selection process successfully. The High Court accepted their contention and holding the selection to be in accordance to the requirement of law, dismissed the writ petition. Challenge to the order passed by the Hon'ble High Court before the Supreme Court in SLP(C) No.5530/2013 was dismissed on 31.03.2014.

8. In view of the aforesaid, the IBM initiated the process for executing the exploration licence in furtherance to the grant already made on 05.04.2011. However, the then Secretary, Ministry of Mines in a meeting

held on 14.07.2015 directed the IBM to seek legal advice on re-allocating the exploration blocks already granted through a process of auction. It may be noted that the Secretary, Ministry of Mines referred to the amendments in the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as “the MMDR Act”); and the suggestion given by him for grant of exploration licence through auction was only because of the amendment in the MMDR Act whereas in the OAMDR Act there was no such statutory provision incorporated by any amendment. Another meeting was held on 18.11.2015; and the Ministry of Mines indicated the reasons to IBM based on which the allocation could be awaited and directed IBM to take a decision on priority basis. Due to delay in execution of the exploration licence, certain allottees approached this Court as also the High Court of Bombay at Nagpur seeking enforcement of their grants and execution of exploration deeds sometime in June, 2016. Pursuant to notice being issued in these petitions, the IBM issued an order on 30.06.2016 thereby reiterating their reasons as communicated by the Ministry in the meeting held on 18.11.2015 and sought to annul the notification dated 07.06.2010. As a consequence thereof, grant of all 62 exploration licences stood rescinded. Aggrieved by this action, writ petitions were filed, which have been allowed by the learned Single Judge by the impugned order. Hence these appeals.

9. Challenging the order passed by the learned Single Judge in the writ petitions, the grounds raised for the challenge can be summarized in the following manner:

- (i) The communication dated 05.04.2011 was not an order of grant. It was only a letter of intent and therefore did not vest any right in the respondents.
- (ii) The allocation was contrary to the provisions of the OAMDR Act and the blocks identified were overlapping with on-shore areas.
- (iii) There was no intent to auction or re-grant of the said blocks and the order dated 30.06.2016 did not amount to colourable exercise of power.
- (iv) The alleged decision of the Government was taken in public interest to avoid granting of exploration licence for atomic minerals to private parties, and
- (v) Certain issues are also raised pertaining to mining of atomic minerals in offshore areas.

10. Even though the aforesaid five grounds have been raised in these appeals, a perusal of the order dated 30.06.2016 impugned in the writ petition would show that most of the reasons as now cited in these appeals were not given in the said order. In fact, the only reasons indicated in the order was that a petition was pending in the High Court of Andhra Pradesh; that the exploration areas are overlapping with some on-shore areas to which OAMDR Act does not apply; and that since there was a blanket ban on mining in offshore areas, therefore if exploration work is done and any mineral is found, no production permit would be granted for mining of the minerals. In fact, these were the only reasons which were indicated in the order seeking to annul the grant of exploration licences.

11. In the original writ petitions filed by the respondents, the challenge was made on the following grounds:

- (i) The impugned order dated 30.06.2016 stands vitiated on account of violation of the principles of natural justice.
- (ii) The order dated 30.06.2016 was without jurisdiction and ultra vires the statute as there was no power of review of an order of grant made under the OAMDR Act.
- (iii) The two reasons provided in the impugned order dated 30.06.2016 for annulling the notification dated 07.06.2010, namely,
 - (a) that the blocks are allegedly overlapping with the on-shore areas and
 - (b) that the alleged complete prohibition on mining in offshore areas were both baseless and contrary.

12. The aforesaid submissions were meticulously scrutinized by the learned writ court and after detailed argument and consideration made, the Single Judge has elaborately dealt with the issues in-extenso. Learned counsel appearing for the appellants took us through the provisions of the OAMDR Act and canvassed the same contentions as were advanced before the learned writ court. It was argued that the OAMDR Act was enacted in the year 2002 with a view to develop, regulate and exploit the mining resources available in the territorial waters, continental shelf and other maritime zones of India so as to augment the national wealth. In exercise of the powers under the OAMDR Act, the Offshore Areas Mineral Concession Rules, 2006 were framed to regulate the procedure for grant of operating rights in respect of such areas. It was emphasized before us that vide notification dated 07.06.2010, Controller General, IBM was appointed as Administering Authority i.e. the statutory authority under OAMDR Act to carry out various functions prescribed under the provisions of the aforesaid Act. The said authority in exercise of the powers under

Section 10 of the OAMDR Act had notified 62 offshore blocks having size of 5 mins latitude x 5 mins longitude for grant of exploration licences vide notification dated 07.06.2010 in offshore areas. The notification for grant of minerals were those specified in First Schedule of OAMDR Act and the same is dealt with by the learned writ court in para 7 of the impugned order. The learned writ court considered the statutory provisions, and in the detailed judgment, dealt with all the issues raised including the question of overlapping and after detailed analysis in the backdrop of the statutory requirement, the affidavits and the pleadings filed, has rejected the contention of the appellants herein. However before us, apart from canvassing various submissions made before the learned Single Judge, additional submissions have been made for contending that the grant made has been rightly cancelled. It was the case of the learned Solicitor General and the ASG before us that the annulment order has been passed mainly on two grounds, namely, overlapping of onshore and off-shore blocks and the restrictions imposed by the Coastal Regulation Zone (CRZ) notification. They also argued that the grant dated 05.04.2011 did not create any vested right in favour of the petitioners; and that it is only an allotment and no right accrues on its issuance. It was also said that the notifications have been withdrawn in public interest. Detailed written submissions have also been brought on record, by the appellants on 23rd April, 2019 and by the respondent on 22nd April, 2019. It was also emphasized before us that the Central Bureau of Investigation had also investigated the matter and in a detailed enquiry submitted has found that the selection process stood vitiated. We would deal with various issues canvassed before us in detail hereinunder. For the sake of brevity, we would deal with all the issues canvassed before us but do not intend to elaborate the submissions made as in

our considered view it may not be necessary for the present as we would be dealing with the submissions as and when occasion arises in this judgment.

13. Learned counsel for the respondents has vehemently argued by placing reliance on the judgment of **Mohinder Singh Gill vs. Chief Election Commissioner**, (1978) 1 SCC 405 and para 5 thereof to say that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons canvassed in the shape of affidavits or otherwise. It was argued that an order that is bad in the beginning cannot get supported when challenged in a court by adding additional grounds cited later on. The learned counsel argued that even though these grounds need not be looked into but as the appellants have also tried to justify their action on these grounds, they have tried to demonstrate before us that even these grounds are not tenable or justified. That being the position, we deem it appropriate to consider all the grounds raised in this appeal and proceed to decide the appeal based on all the grounds canvassed before us and as indicated in the memorandum of appeal.

14. The first ground on which the impugned action was challenged before the writ court was that the impugned action was vitiated on account of the violation of principles of natural justice. Even though, the learned Solicitor General and the learned ASG did not argue anything on the question of violation of the principles of natural justice and the finding recorded in this regard by the learned writ court, we deem it appropriate to first proceed to consider this aspect of the matter and analyse the reasons given by the learned Single Judge on this issue and consider as to whether it can be upheld or warrants reconsideration. It is the case of the petitioners /

respondents herein that before the impugned action was taken and the grant made on 05.04.2011 was set aside, no notice was issued, no opportunity of hearing was afforded and therefore the entire action stands vitiated. This was rebutted by the appellants primarily on the ground that the grant does not create any vested right.

15. Admittedly, in the present case, no notice or opportunity of hearing was provided to the writ petitioners before passing the impugned order on 30.06.2016. The consequence of recalling the notification dated 07.06.2010 was to set at naught the order of grant dated 05.04.2011. A perusal of the provisions of the OAMDR Act and the Offshore Areas Mineral (Concession) Rules, 2006 (hereinafter referred to as the “OAMC Rules”) clearly shows that the legislative intent was to preserve the principles of natural justice and various provisions of the Rules and the Act do indicate that legislative intent. In fact, a perusal of Section 7(1) of the Act which confers powers on the Central Government to prematurely terminate operating rights for reasons mentioned therein preserves the principles of natural justice and contemplates that no such order can be passed without providing an opportunity of hearing in terms of sub-clause (2) of Section 7. Similarly, Rule 69(1) and (2) of the OAMC Rules also require granting opportunity of hearing before taking any action which would prejudicially affect the rights of a person in whose favour a grant has been made. If we analyse the facts of the present case in the backdrop of the aforesaid statutory provisions, particularly Rule 69(1) and (2), it is clear that the grant was made on 05.04.2011 in favour of the respondents and while annulling this grant no opportunity of hearing has been granted. The legislative intent of providing an opportunity of hearing is evident, since, if an application

seeking grant of licence is to be rejected, Rule 16(2) requires an opportunity of hearing to be granted. If even an application praying for a grant can only be rejected after an opportunity of hearing is granted, then the legislative intent is very clear, namely, once a grant is made and is sought to be cancelled or withdrawn, the principles of natural justice would have to be followed. The appellants have stated that giving an opportunity of hearing was not required as the initial grant itself was contrary to law. In our considered view, in the case of **Baraka Overseas Traders vs. Director General of Foreign Trade**, (2006) 8 SCC 103, similar contentions have been rejected by the Hon'ble Supreme Court and in paras 15, 16 and 17 the contentions as advanced before us stood rejected. It has been held that grant of a licence certainly creates rights in favour of a licensee; and if the licensing authority was of the opinion that the licence was granted by misrepresentation then a show-cause notice and opportunity of hearing is required. In this case, the learned writ court has taken note of the statutory provisions and has recorded a finding that the provisions for affording a hearing is evident from the statutory rules and when we go through the statutory rules providing for scrutinizing an application and making a grant, it is clear that a vested right is created once a grant is made; and the contention that until and unless the exploration licence is granted no vested right is created cannot be accepted for the simple reason that the execution of exploratory licence after the grant is only a ministerial act which does not require any further decision making action to be taken. In fact, once the grant is made, it creates a vested right and merely because the exploratory licence has not been executed, in our considered view, it cannot be said that a vested right has not been created. Grant itself creates a right and therefore

the principles of natural justice ought to have been followed, particularly when even for rejecting an application for grant of licence the statutory rule as indicated hereinabove i.e. Rule 16(2) requires opportunity of hearing to be given. We may also, at this stage, take note of the law laid down by the Hon'ble Supreme Court in the case of *State of Orissa vs. Binapani Dei*, AIR 1967 SC 1269 wherein it has been clearly held that any act which causes prejudice to any person has to be taken only after grant of opportunity of hearing. The grant made to the petitioners on 05.04.2011 has been prejudiced by the order dated 30.06.2016 without giving an opportunity of hearing; and that is the reason why the learned Single Judge has held that the principles of natural justice have been violated. That apart, we may take note of the fact that the learned Single Judge has also found in the order impugned that the action stands vitiated as the objective of cancelling the grant was a pre-determined act as is evident from the minutes of meeting dated 14.07.2015 held between the Secretary, Ministry of Mines and the IBM, wherein the Secretary had indicated and directed to try and cancel the grant so that the exploration licence would be available for re-grant through auction. In our considered view, this is a case where the principles of natural justice were required to be followed in annulling the grant; and this is one of the grounds on which the entire action stands vitiated.

16. The second ground canvassed before us and considered by the learned writ court was to the effect that the impugned action was taken without jurisdiction and is ultra vires the statute as there is no power to review or recall an order of grant under the OAMDR Act. The learned Single Judge in para 100 of the impugned order has dealt with the issue in detail and we are not reproducing the same here. It was the case of the respondents before the

learned Single Judge that the Administering Authority has in fact reviewed his order dated 05.04.2011 despite the fact that no such power is available to him under the statute. The appellants, on the other hand, have tried to contend that in terms of Section 21 of the General Clauses Act, the Administering Authority who had the power to issue the notification under the OAMDR Act would also have the power to withdraw the same. There may be no dispute in accepting this proposition in terms of Section 21 of the General Clauses Act. However, that does not mean that this power is unfettered or unchecked or is such a general power that it can be resorted to without referring to the context in which the notification was issued in the first place. In this regard, we may take note of the law laid down by the Hon'ble Supreme Court in the case of **Industrial Infrastructure Development Corporation vs. Commissioner of Income Tax, MP**, (2018) 4 SCC 494 wherein in paras 21 and 22 the Hon'ble Supreme Court has dealt with the legal issue in the following manner:

“21. The general power, under Section 21 of the General Clauses Act, to rescind a notification or order has to be understood in the light of the subject-matter, context and the effect of the relevant provisions of the statute under which the notification or order is issued and the power is not available after an enforceable right has accrued under the notification or order. Moreover, Section 21 has no application to vary or amend or review a quasi-judicial order. A quasi-judicial order can be generally varied or reviewed when obtained by fraud or when such power is conferred by the Act or Rules under which it is made. (See Interpretation of Statutes, Ninth Edn., by G.P. Singh, p. 893.)

22. Relying upon the aforementioned rule of interpretation, this Court has held that the Government has no power to cancel or supersede a reference once made under Section 10(1) of the

Industrial Disputes Act, 1947. (See State of Bihar v. D.N. Ganguly [State of Bihar v. D.N. Ganguly, AIR 1958 SC 1018] .) Similarly, on the same principle it is held that the application of Section 21 of the General Clauses Act has no application to amend or rescind or vary a notification issued under Section 3 of the Commissions of Enquiry Act for reconstituting the commission by replacement or substitution of its sole member except applicable for a limited purpose for extending the time for completing the enquiry. (See State of M.P. v. Ajay Singh [State of M.P. v. Ajay Singh, (1993) 1 SCC 302 : AIR 1993 SC 825] .) It is also held while construing the provisions of the Citizenship Act that the certificate of registration of citizenship issued under Section 5(1)(c) of the Citizenship Act cannot be cancelled by the authority granting the registration by recourse to Section 21 of the General Clauses Act. (See Ghaurul Hasan v. State of Rajasthan [Ghaurul Hasan v. State of Rajasthan, AIR 1967 SC 107] and Hari Shanker Jain v. Sonia Gandhi [Hari Shanker Jain v. Sonia Gandhi, (2001) 8 SCC 233 : AIR 2001 SC 3689] .) And lastly, while construing the provisions of the Representation of the People Act, it is held that the Election Commission cannot, by recourse to Section 21 of the General Clauses Act, deregister or cancel the registration of a political party under Section 29-A of the Act for the decision of the Commission to register a political party under Section 29-A(7) of the Act is quasi-judicial in nature. [See Indian National Congress (I) [Indian National Congress (I) v. Institute of Social Welfare, (2002) 5 SCC 685].]”

17. In the present case, in pursuance to issuance of the notification dated 07.06.2010, a detailed process of selection in terms of Section 12 of the OAMDR Act has been undertaken and the grant was made to the respondents after following these provisions. In view of the exposition of law by the Hon’ble Supreme Court as detailed hereinabove, once there is a statutory provision for making the grant the appellant cannot resort to the

general power under the General Clauses Act to defeat the right of the respondents. On the contrary, the Administering Authority while considering the application for grant acts as a quasi-judicial authority as per the test laid down by the Hon'ble Supreme Court in the case of **Indian National Congress vs. Institute of Social Welfare**, (2002) 5 SCC 685 which reads as under:

“24. The legal principles laying down when an act of a statutory authority would be a quasi-judicial act, which emerge from the aforesaid decisions are these:

Where (a) a statutory authority empowered under a statute to do any act (b) which would prejudicially affect the subject (c) although there is no lis or two contending parties and the contest is between the authority and the subject and (d) the statutory authority is required to act judicially under the statute, the decision of the said authority is quasi-judicial.

27. What distinguishes an administrative act from a quasi-judicial act is, in the case of quasi-judicial functions under the relevant law the statutory authority is required to act judicially. In other words, where law requires that an authority before arriving at a decision must make an enquiry, such a requirement of law makes the authority a quasi-judicial authority.”

18. The said test makes it evident that under the OAMDR Act the Administering Authority while considering the application for grant of licence when required to act at that stage has to make an enquiry so that requirement of Section 12 is satisfied, coupled with the fact that in terms of Rule 16(2) of the OAMC Rules he is required to provide an opportunity of hearing before taking any adverse decision on the application seeking exploration licence. These facts clearly show that the Administering Authority is acting as a quasi-judicial authority and therefore in the light of

the legal principles discussed hereinabove, particularly, the law laid down in the case of **Industrial Infrastructure Development Corporation** (supra), Section 21 of the General Clauses Act cannot be resorted to.

19. Once in terms of Section 12 of the OAMDR Act the grant is issued by the statutory authority, the Administering Authority is only empowered to enforce the conditions of grant in terms of Section 12(2) read with Rule 69 and cannot review or recall the order but can cancel the grant for failure to comply with the provisions as contemplated under sub-section (2) of Section 12. In the present case, admittedly there is no failure on the part of the respondents to comply with conditions to enable the appellant – statutory authority to exercise powers under Section 12(2) or Rule 69.

20. It is a settled principle of law that the power to review or revise a decision has to be specifically conferred by the statute and the same being absent in the OAMDR Act, the Administering Authority has no power to do so. In this regard, the law laid down by the Hon'ble Supreme Court in **Kalabharti Advertising vs. Hemant Vimalnath Narichania**, (2010) 9 SCC 437 can be considered wherein the principle has been discussed in paras 12, 13 and 14 in the following manner:

“Legal Issues

Review in absence of statutory provisions

12. It is settled legal proposition that unless the statute/rules so permit, the review application is not maintainable in case of judicial/quasi-judicial orders. In the absence of any provision in the Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed, is ultra vires, illegal and without jurisdiction. (Vide Patel Chunibhai Dajibha v. Narayanrao Khanderao

Jambekar [AIR 1965 SC 1457] and Harbhajan Singh v. Karam Singh [AIR 1966 SC 641].)

13. In Patel Narshi Thakershi v. Pradyuman Singhji Arjunsinghji [(1971) 3 SCC 844 : AIR 1970 SC 1273] , Major Chandra Bhan Singh v. Latafat Ullah Khan [(1979) 1 SCC 321], Kuntesh Gupta (Dr.) v. Hindu Kanya Mahavidyalaya [(1987) 4 SCC 525 : 1987 SCC (L&S) 491 : AIR 1987 SC 2186] , State of Orissa v. Commr. of Land Records and Settlement [(1998) 7 SCC 162] and Sunita Jain v. Pawan Kumar Jain [(2008) 2 SCC 705 : (2008) 1 SCC (Cri) 537] this Court held that the power to review is not an inherent power. It must be conferred by law either expressly/specifically or by necessary implication and in the absence of any provision in the Act/Rules, review of an earlier order is impermissible as review is a creation of statute. Jurisdiction of review can be derived only from the statute and thus, any order of review in the absence of any statutory provision for the same is a nullity, being without jurisdiction.

14. Therefore, in view of the above, the law on the point can be summarised to the effect that in the absence of any statutory provision providing for review, entertaining an application for review or under the garb of clarification / modification / correction is not permissible.”

21. Under the OAMDR Act, the statute only provides for a power of appeal to the Central Government in terms of Section 34, that also to the Central Government. That being so, in the absence of the power of review the Administering Authority, in our considered view, became *functus officio* insofar as issue of grant was concerned and once the power of review was not available, the order impugned could not have been passed; and in holding so the learned writ court has not committed any error.

22. Now we may consider the arguments advanced by the appellants that the learned Single Judge has committed an error in deciding the question

with regard only to the reasons contained in the impugned order. As already indicated hereinabove, the reasons mentioned in the impugned order dated 30.06.2016 for annulling the notification dated 07.06.2010 and the subsequent action thereto including the order of grant dated 05.04.2011 are: (a) overlap of the exploration block as identified with certain onshore areas; and, (b) the alleged prohibition of all mining activities within the CRZ area in terms of CRZ Notification dated 06.01.2011. This point was elaborately argued before us by the learned Solicitor General while referring to the statutory provisions and various CRZs in question, it was argued that the issue of overlap has been completely misconstrued by the learned Single Judge and contrary to the statutory provisions, the requirement of maintaining the blocks in the size of 5 mins latitude x 5 mins longitude has been diluted by permitting the overlap.

23. The issue of overlap has been considered by the learned Single Judge in paras 75, 76 and 78 of the impugned order in the following manner:

“75. The issue of overlapping of some blocks is nothing but an afterthought and the reasons have been manufactured to somehow cancel the grants so that the same can be re-allocated/re-granted. The same is evident from the following facts:

i. The notification inviting applications was issued on 07.06.2010 with prior approval and consent of Controller General and various competent authorities and departments of Government of India. The issue of overlapping was never raised by any such authority.

ii. In fact, a committee of experts had been constituted for the purpose of selection of successful applicants and such

committee had members from IBM, GSI and NIO who also recommended the granting of such blocks without finding any fault therein including of the alleged overlapping.

iii. The order of grant was issued on 05.04.2011 and the said authorities defended the action of grant before various High Courts viz. Chennai, Andhra Pradesh (Counter of UOI and IBM page 285-293) and Bombay (Nagpur Bench) (counter of IBM page 435-452) and rather vehemently defended the issue of overlapping raised by the writ petitioners before the Andhra Pradesh High Court. They never found any such illegality for a period of over 5 years since the issue of notification dated 07.06.2010.

iv. The fact that the said reason is manufactured one is also evident from the minutes dated 14.07.2015 at pages 167-168 wherein though IBM itself was asking for proceeding with execution of the exploration licenses without finding any fault, however, the then Secretary, Ministry of Mines directed that IBM should consider some process by which the present grants could be cancelled and the blocks put up for re-grant. In pursuant to such directions, reasons were manufactured. In fact, writ petitions had been filed before this Court in W.P.(C) No. 5734/2016 as well as before the High Court of Bombay in W.P.(C) No. 3282//2016 and W.P.(C) No. 3625/2016. Notice by this Court was issued in the month of June 2016 and the Bombay High Court issued notice on 15.06.2016 wherein petitioners were seeking a mandamus/direction to IBM to execute the exploration licenses pursuant to grant. After waiving notice by IBM and Union of India on

15.06.2016, the impugned order dated 30.06.2016 was issued in a hurried manner with a predetermined approach.

76. The very fact that issue of overlap is an afterthought and a malafide, reason is also evident from the counter affidavit filed by IBM before the High Court of Andhra Pradesh in W.P.(C) No. 12835/2011 wherein while defending the issue of overlap as alleged in the writ petitions mentioned above, IBM in its counter affidavit specifically stated that under Rule 43(3) of the OAMC Rules, 2006, no mining activity in any way is permissible within one nautical mile of the shoreline and therefore, even if there was an overlap, no rights would be vested and thereby the allocation of blocks, with some overlap cannot be held to be beyond the jurisdiction of the Administering Authority or in violation of the provisions of the OAMDR Act.

78. Thus, the case of the respondents is absolutely false and said issue is without affidavit with an attempt to mislead this Court.”

24. If we analyze the aforesaid reasons in the backdrop of the material available before us and considered by the learned Single Judge, we see no reason to interfere into the same. In fact, it was sought to be contended by the learned SG that the Screening Committee had pointed out that some of the blocks as notified did overlap with the onshore areas. In spite thereof, the Administering Authority proceeded in issuing the grant on 05.04.2011. In our considered view, this contention of the appellants is not correct inasmuch as in the proceedings before the High Court of Bombay, Nagpur Bench, the appellants themselves have filed affidavit defending the grant and the entire selection procedure itself when the same was under challenge

before the said court. The appellants herein on 13.08.2013 defended this action of theirs before the High Court of Bombay, Nagpur Bench and in the judgment rendered by the learned High Court on 17.09.2013, it was never the contention of the appellants that the notification dated 07.06.2010 was void on any issue including the issue of overlap. On the contrary, the stand of the appellants before the High Court of Bombay was contrary to what is being now stated before us and this is the reason why the learned Single Judge has come to a conclusion that the justification now given for withdrawing the grant is nothing but an afterthought as is made out from the record. Even before the other High Courts where the selection process was challenged, the appellants defended the grant throughout the period from 2011 till 2015 and it is difficult for us to accept that the appellants for five years would not have taken any action as being contended now before us with regard to the notification dated 07.06.2010 overlapping and therefore vitiated.

25. It was also contended before us by the learned SG that the blocks can be granted only in the size of 5 mins latitude x 5 mins longitude and the direction issued by the learned Single Judge whereby the onshore areas would be excluded from working would, in fact, amount to granting a block of a smaller size than what is required under the statute. It was tried to be emphasized that contrary to the size indicated in the statutory provision, no block of a smaller size can be granted. In our considered view, this contention is wholly misconceived and cannot be accepted. In our opinion, the size of the block under law is not to be reduced from 5 mins latitude x 5 mins longitude. In fact, the learned Single Judge has reconciled the position and held that the blocks of the statutory size would be granted but

the licence holder shall only get permission to undertake exploration and/or mining operation over the extent of area covered under the OAMDR Act. That being so, even if the licence deed is executed for the entire block covering an area 5 mins latitude x 5 mins longitude under law, the permission available to the licence holder is to operate only over offshore areas covered under OAMDR Act and not beyond that, i.e. onshore area.

26. In our considered view, the allegation pertaining to overlap cannot be accepted for the following reasons also:

(i) The blocks are to be identified as 5 mins latitude x 5 mins longitude under the OAMDR Act since no physical boundaries can be provided over sea/offshore waters; and therefore, the provision is only for ease of reference.

(ii) Admittedly, as the shore line does not run parallel to the longitude in view of the physical features of the area, there is bound to be certain degree of overlap regarding those blocks which are next to the shore. This however does not mean that the licensee has any right over the onshore area. In fact, even IBM was aware of the said fact and in the report dated 11.12.2017 available on record, the Controller General admitted that the reason in this regard contained in the order dated 30.06.2016 was absolutely erroneous.

(iii) That apart, under Rule 18(2) of the OAMC Rules the Administering Authority has power to impose additional conditions while executing the exploration licence and in the exploration licence executed with one M/s UA Minerals Pvt. Ltd. in pursuance to orders passed in proceedings initiated by them, a condition was imposed by

the Administering Authority that no right would accrue to the allottees over any onshore area covered under the exploration licence. In fact, a perusal of condition No. 3 of the Deed of Exploration Licence dated 30.11.2017 issued in favour of this licensee clearly shows that the area granted under reference in Schedule A of the exploration licence deed shall exclude all areas lying onshore to which the OAMDR Act does not apply. This fact further clears any ambiguity over this issue as the law empowers the Administering Authority to impose specific condition and to restrict areas which are granted under the exploration licence and prevent the issue of overlapping.

(iv) The parties while submitting the application were conscious of the fact that they would only derive rights for exploration/mining in the offshore areas; and no successful person would ever be able to claim rights over the onshore area, which owing to the manner in which the blocks are to be identified would necessarily overlap where the block is close to the coastline.

27. That apart, we are of the considered view that the issue of overlap is an afterthought as is evident from the counter affidavit filed by IBM before the High Court of Judicature of Andhra Pradesh at Hyderabad in W.P.(C) No.12835/2011 wherein, while defending the issue of overlap, as alleged in the said writ petition in para 8, IBM in their counter affidavit specifically stated that under Rule 43(3) of the OAMC Rules, 2006, no mining activity in any way is permissible within one nautical mile of the shore line; and therefore even if there was an overlap, no right would vest in the respondents and thereby the allocation of block with some overlap cannot be

held to be beyond the jurisdiction of the Administering Authority or in violation of the OAMDR Act. In fact, during the course of hearing before us, learned counsel for the respondents had taken us through the affidavits filed by the appellants in various proceedings to show the contradictory stand taken by them. In our considered view, the learned Single Judge in para 79 of the impugned order has dealt with the aforesaid issue in the following manner:

“79. During the arguments, learned ASG contended that due to the overlap, the grants allegedly stand vitiated as under section 10(3) read with section 5(4) of the OAMDR Act, blocks of only 5 x 5 minutes can be granted and as such if area of overlap is excluded, the block will not be of 5 x 5 minutes. Learned counsel for the petitioner submitted that the said contention is absolutely erroneous and absurd. Section 10(3) merely fixes the size of the blocks. Merely being granted a block does not mean that the licensee can work all the areas in the said block. For example, under section 9, the Central Government has power to close any area in part or whole from being worked. Similarly, under Rule 43(3) of the OAMC Rules, when undertaking mining a distance of one nautical mile has to be maintained from the sea shore, though the block may be abutting the sea shore. Therefore, if for the reasons stated in section 9, the Central Government closes only a portion of one block, or obligation under section 43(3) of OAMC Rules is complied with, it would not mean that the size of the block is affected in any manner or that the block is no longer 5 x 5 minutes. Any such interpretation as is being sought by the respondents would make the entire act unworkable as every time power under section 9 or a condition under Rule 18 or 43(3) is enforced, the same would then make the grant invalid, if the argument of the learned ASG is to be accepted. Such a construction would

result in absurdity. Learned counsel for the petitioner submitted that the OAMDR Act, under section 10 introduces standard block sizes and measurements as there are no physical boundaries on the sea surface and as such area can only be identified by longitudes and latitudes. It is settled law that an Act should be interpreted as a whole and interpretation which leads to absurdity is to be avoided at all costs.”

28. As noticed, a fact which cannot be disputed is that the appellants have sought to change their stand at every stage. Being faced with the findings as recorded by the learned Single Judge, a new ground is now raised in these appeals to say that strict demarcation is required so as to avoid illegal mining and such overlap may lead to encroachment on the land to which the OAMDR Act does not apply. In our considered view, this contention has to be outrightly rejected. If the terms and conditions of the licence or the provisions of the OAMDR Act are violated, the Administering Authority has statutory powers to take action against such illegal mining or encroachment on land, which if done, would amount to breach of the conditions of the grant, and therefore on these grounds this contention of overlap has to be and is accordingly rejected.

29. Next issue raised was the prohibition with regard to mining in the CRZ area. In this regard, the learned Single Judge has dealt with the issue of CRZ notifications and mining in such areas in detail from paras 80 to 81 and thereafter again from paras 84 to 86 in the impugned order; and it is categorically recorded that the CRZ notification does not impose a complete ban on the mining activities. Nothing has been demonstrated or shown to us which warrants reconsideration of the issue as decided by the learned Single Judge. In fact, the impugned annulment order dated 30.06.2016 seeks to

allege that there is complete prohibition on all mining activities in the CRZ areas, and therefore, no purpose would be served in granting exploration licence as subsequently no production lease can be granted. In our considered view, the issue of prohibition on mining does not arise at the present stage as the respondents would, at this stage, on their own cost would only be exploring for the kind of minerals that are available and which can be commercially exploited. Thereafter, it would submit a report to the Government of its findings. Exploration operations are entirely different from mining activities. The issue of mining and permission to mine would arise only after exploration is completed and when the concerned licensee applies for production lease. The appellants on this ground cannot be allowed to pass orders pre-empting what may or may not transpire in future.

30. We may further take note of the fact that the appellants not only in their submissions before the learned Single Judge but also in the affidavits filed stated that they would re-grant the blocks again, preferably through auction. Even though when confronted with these facts, it was submitted that there is no intention for re-auction, but the fact remains that in the notings on file, so also in the affidavits, there are admissions with regard to re-grant by way of auction. This itself amounts to an admission that there is no prohibition in law on the issue of mining within the CRZ.

31. We may take note of the fact that the CRZ notification dated 06.01.2011 specifically carves out an exception permitting mining of rare minerals not found elsewhere outside the CRZ areas. In fact, Clause 4(ii)(g) which provides for permissible activities within the CRZ reflects that mining of rare minerals is allowed. We may also take note of the fact that the

applications for grant of exploration licence were made for seeking permission to explore the availability of, amongst others, of minerals as are mentioned in the First Schedule of OAMDR Act including atomic minerals. That being so, the entire basis of the impugned order dated 30.06.2016, namely the alleged mining within CRZ area not being permissible is erroneous. In fact, the learned Single Judge in para 81 of the impugned order holds that the order dated 30.06.2016 amounts to putting the cart before the horse inasmuch as unless and until exploration is undertaken and the reports disclose that there were no rare minerals/atomic minerals within the blocks granted, the alleged reasoning pertaining to prohibition on mining could not have been arrived at. In fact in these appeals, there is no challenge to the finding of the learned Single Judge regarding the issue of complete prohibition of mining in CRZ areas under the notification dated 06.01.2011. As far as the subsequent notification dated 06.10.2017 is concerned, this amendment, in our considered view, brings out further clarity on the rare minerals which can be mined under the CRZ. The amendment provides that atomic mineral as notified under Part-B of the First Schedule of the MMDR Act are permitted to be mined within the CRZ. The minerals mentioned, namely, ilmenite, rutile, zircon, etc. are identified as atomic minerals in Part B of the First Schedule to the MMDR Act. That being so, if the aforesaid minerals are found during exploration, there will be no impediment in granting the production lease for the said minerals as mining of the said minerals is expressly provided now by the CRZ notification. These facts were communicated by the then Controller General, IBM and the Administering Authority in his report vide e-mail dated 24.01.2017 to the Ministry of Mines by contending that in light of the CRZ notification dated

06.10.2017 now exploration licence can be granted even for atomic minerals. That apart, the clarification available on record dated 09.02.2018 issued by the Ministry of Environment, Forest and Climate Change also clarifies that mining of rare minerals was a permitted activity under the CRZ notification dated 06.01.2011 and specified in Part B of the First Schedule to MMDR Act.

32. We may take note of the fact that the primary reason mentioned in the order impugned dated 30.06.2016 was the alleged prohibition of mining within CRZ. The CRZ notification dated 06.01.2011 is the only notification which is required to be considered to test the correctness of the impugned action and this notification does not provide for absolute prohibition on mining. On the contrary, mining of rare minerals is very much permitted by this notification as is evident from paras 3(x), 4(ii)(g), 8(III)(iii)(c) and 8(IV)(b).

33. That being the factual position, as discussed by the learned Single Judge, with reference to the specific reasons mentioned in the impugned order and, in our considered view, the same being in accordance to the statutory requirement, we find no error in the order passed by the learned Single Judge.

34. Having considered the main grounds that were canvassed before the learned writ court, we may now proceed to consider the grounds that have been raised before us namely the grounds that were not reflected in the impugned annulment order dated 30.06.2016 but are the grounds which have been subsequently reflected in the counter affidavit to justify the impugned action.

35. One of the moot question that was canvassed before us was that the letter of intent/grant/allotment dated 05.04.2011 does not create any vested right or grant any legally enforceable right to the respondents. It is the case of the appellants that no right can be derived by the respondents as the same was only a conditional order which is nothing but in the nature of an in-principle approval which is subject to finalization on issuance of the exploration licence which has to be executed. It is said that until and unless the exploration licence is executed, no right accrues to the respondents. It is, therefore, the case of the appellants that as no right accrues to the respondents by virtue of the grant or approval of 05.04.2011 it could be withdrawn at any stage. However, it was argued before us by the respondents/petitioners that the nature of grant made, which is based on compliance with certain statutory procedural requirement, creates a vested right in their favour and the accrued right which they have derived by virtue of the statutory provisions could not be curtailed or taken away in the manner done. It is their case that once, in accordance to the provisions of the OAMDR Act and the Rules framed thereunder, the grant was made on 05.04.2011, the only subsequent action required was the ministerial act of executing the exploration licence and nothing more.

36. The grant of exploration licence and the process for doing so are governed by the OAMDR Act which came into force w.e.f. 15.01.2010. By notification dated 11.02.2010 and subsequently in pursuance to the statutory requirement in accordance to the provisions of Section 4A of the OAMDR Act, the Controller General, IBM was appointed; and on 11.02.2010 the Administering Authority in terms of Section 10(1) of the Act was required to notify the blocks within six months of commencement of the Act i.e.

within six months of 15.01.2010, and he accordingly, notified the same on 07.06.2010 identifying blocks and notifying applications for exploration licence within the statutory prescribed period. The making of an application for exploration licence and the receipt thereof are governed by Rule 13 and 14 of the OAMC Rules and the grant of licence is governed by Section 12 of the OAMDR Act. Section 12 of the OAMDR Act reads as under:

“12. (1) The administering authority may grant an exploration licence to any person who-

(a) is eligible under section 6 for grant of operating right;

(b) produces, to the satisfaction of the administering authority, evidence that such person possesses the requisite technical ability and financial resources to undertake exploration operation based on such scientific parameters, as may be prescribed;

(c) submits a work programme for the area applied for, prepared in such manner and supported by such data as may be prescribed, setting forth the activities proposed to be carried out during the period of the exploration licence including the intended exploration schedule and methods to be used, an estimated schedule of expenditure, measures to prevent pollution and protect the environment and to monitor the effectiveness of environmental safeguards subject to the modifications which the administering authority may make in such work programme;

(d) undertakes not to deviate from the work programme for exploration licence approved by the administering authority; and

(e) has fulfilled, to the satisfaction of administering authority, all his statutory obligations under any operating right previously-

(i) granted; or

(ii) transferred in the prescribed manner,

to him.

(2) The administering authority may, if there is any reasonable cause to believe that any person, to whom an exploration licence has been granted, has violated any undertaking given under clause (d) of sub- section (1), terminate the exploration licence.

(3) All applications for the grant of exploration licence received within the prescribed time and which satisfy the conditions specified in sub-section (1) shall be considered together and while making a selection for the grant of exploration licence, the administering authority shall follow the procedure given below, namely:-

(a) where only one application is received in respect of an area, the administering authority may grant the exploration licence to the applicant;

(b) where two or more applications are received in respect of the same area or substantially the same area, the order of preference shall be as follows, namely:-

(I) preference shall be given to an applicant who requires the mineral for use in an industry either already owned by the applicant or who has taken sufficient steps to set- up such industry:

Provided that where there are more than one application of such category, the administering authority may grant licence based on a comparative evaluation of the-

(i) nature, quality and experience of the technical personnel employed by the applicant;

(ii) financial resources of the applicant;

(iii) nature and quantum of the exploration work proposed by the applicant; and

(iv) nature, quality and quantum of data submitted along with the programme of exploration;

(II) in case of other applicants, not covered under sub- clause (I), the administering authority may grant licence based on a comparative evaluation of matters stated in items (i) to (iv) of the proviso to sub- clause (I).

(4) The period for which an exploration licence may be granted shall not exceed three years.

(5) An exploration licence granted under sub- section (1) may be renewed for a period not exceeding two years if, after a review, the administering authority is satisfied that the licensee has been conducting the exploration operation in accordance with the work programme approved by the administering authority regarding such licence and longer period of renewal of the licence is considered necessary to enable the licensee to complete exploration.

(6) The area that may be granted under exploration licence shall not exceed a block of thirty minutes latitude by thirty minutes longitude:

Provided that if the administering authority is of the opinion that in the interest of the development of any mineral, it is necessary so to do, it may, for reasons to be recorded in writing, permit any person to acquire an area in excess of the area specified in this sub- section."

37. A perusal of the aforesaid provision would show that the power and discretion to grant exploration licence vest solely with the Administering Authority. The provision provides the conditions that are required to be satisfied for the Administering Authority to exercise its discretion in favour

of an applicant and also for instances to deal with cases where there are more than one applicant for a given area. The manner in which preference is to be given and the applications are to be scrutinized for providing the grant is stipulated in the statute. The language of the statutory provision makes it abundantly clear that the Administering Authority has to apply his mind and only on arriving at a satisfaction to the effect that the conditions are fulfilled, a decision can be taken by him for grant of licence. The question, therefore, would be as to when the decision to make the grant is taken after following all the statutory formalities; and whether communication dated 05.04.2011 can be called only a letter of intent or the grant itself?

38. At this stage, it would be appropriate to take note of Rule 16 of the OAMC Rules. The same reads as under:

“16. Refusal of application for an exploration licence.-

(1) If the administering authority is satisfied that the application is in order, he may issue an order for grant of an exploration licence in Form J Subject to such terms and conditions as are specified in rule 18 and the additional terms and conditions as may be stipulated therein.

(2) The administering authority may, after giving an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant, refuse to grant or renew an exploration licence over the whole or part of the offshore area applied for.

(3) An application for the grant or renewal of an exploration licence made under rule 13 shall not be refused by the administering authority only on the ground that Form G or Form H, as the case may be, is not complete in all material particulars, or is not accompanied by the documents referred to in clauses (a), (b) and (c) of sub-rule (2) of that rule.

(4) Where it appears that the application is not complete in all material particulars or is not accompanied by the required

documents, the administering authority shall, by notice, require the applicant to supply the omission or, as the case may be, furnish the documents without delay and in any case not later than thirty days from the date of receipt of the said notice by the applicant.”

39. The aforesaid Rule under sub-clause (1) provides for issuance of the order for grant and sub-clause (2) provides for cases where the Administering Authority wishes to refuse grant of exploration licence. In the present case, the Administering Authority acted under Section 12 read with Rule 16(1) and issued the order for grant of licence in terms of the order dated 05.04.2011 and the relevant extract of the grant reads as under:

“In view of above by virtue of powers vested in me under Rule 16(1) of the Offshore Areas Mineral Concession Rules, 2006, I hereby order grant of Exploration Licence subject to such terms and conditions as are specified in Rule 18 and the additional terms and conditions as may be stipulated therein to you over the block considered and qualified as above for the offshore area minerals.

You are advised to execute the Exploration Licence deed in Form K as required under sub-rule (1) & (2) of Rule 19 of the Offshore Areas Mineral Concession Rules, 2006 within 90 (Ninety) days from the date of issue of this order.

This order is being issued without prejudice to any other Act, Rules, Notifications, Honourable Court Orders / directions applicable in this regard.

*(C.S. Gundewar)
Controller General & Administering Authority”*

40. Further, Rule 18 of the OAMC Rules makes it evident that the said Rule provides for conditions which will be part of the exploration licence. The Rule does not provide for satisfying certain conditions prior to

execution of the exploration licence but only putting the grantee to notice of the grant and of the conditions on which the grant is made. A perusal of sub-rule (4) of Rule 18 makes it clear that the licence stands granted or else there would have been no occasion to provide for cancellation of licence as contained in the rule referred to in communication dated 05.04.2011. For the sake of brevity, Rule 18(1) and Rule 18(4) of the OAMC Rules is reproduced hereinunder which would explain the position:

“18. Conditions of an exploration licence.- (1) Every exploration licence granted under these rules, shall, in addition to any other conditions that may be specified therein, be subject to the following conditions, namely:-

(i) the licensee shall pay exploration charges at the rate of five thousand rupees as a consideration for every standard block of five minutes latitude by five minutes longitude covered by the exploration licence for each year or part of a year of the period for which licence is granted or renewed;

(ii) for every standard block as specified in clause(i), the licensee may, win and carry for purposes other than commercial purposes-

(a) any quantity of such minerals within the limits specified in column (3) of the Schedule without any payment;

(b) any quantity of such minerals not exceeding the limits specified in column (4) of the Schedule on payment of royalty for the time being specified in the First Schedule to the Act in respect to those minerals:

Provided that if any quantity in excess of the quantities referred to in sub-clause (b) is won and carried away, the administering authority shall recover the cost of the excess quantity of minerals won and carried away.

(iii) with the written approval of the administering authority, the licensee may carry away quantities of minerals in excess of the limits specified in the Schedule, on payment of royalty for the time being specified in the First Schedule to the Act, for chemical, metallurgical, ore-dressing and other test purposes;

(iv)(a) the licensee shall report to the administering authority the discovery of any mineral not specified in the licence within a period of sixty days from the date of such discovery. Consequent upon such reporting, the newly discovered mineral shall be deemed to have been included in the exploration licence except the mineral oils namely oil, gas, gas hydrate, oil sands or any other hydrocarbon compound.

(b) the licensee shall, if encountered during exploration operations, report indications of any form of mineral oil, namely, oil, gas, gas hydrate, oil sands or any other hydrocarbon compound, to the administering authority within a period of sixty days from the date of such encounter, who in turn shall pass on the information to the Secretary to the Government of India in the Ministry of Petroleum and Natural Gas:

Provided that no atomic mineral shall be included in the exploration licence without approval of the Department of Atomic Energy.

(v)(a) the licensee shall not, except with the previous sanction of the administering authority, transfer his licence to any person:

Provided that no exploration licence shall be transferred to any person who has not filed an affidavit stating that he has filed an up-to-date income-tax return and paid the income tax assessed on him and paid the income tax on the basis of self assessment as provided in the Income-tax Act, 1961 (43 of 1961):

Provided further that the administering authority shall not grant its sanction for the transfer of exploration licence unless the transferee has accepted all the conditions and liabilities, which the transferor has in respect of such exploration licence.

(b) where on an application for grant of sanction to transfer the exploration licence under sub-clause (a), the administering authority has granted sanction for transfer of such licence, a transfer deed in Form J, or a form as near thereto as possible shall be executed within three months of the date of consent, or within such further period as the administering authority may allow in this behalf.

(c) the administering authority may, by order in writing and after providing the licensee the opportunity of being heard, cancel such exploration licence at any time if the licensee has, in the opinion of the administering authority, committed a breach of this clause;

(vi) the licensee shall not pay any wage less than the minimum wages prescribed by the appropriate Government from time to time, under the Minimum Wages Act, 1948 (11 of 1948);

(vii) the licensee shall make available all data or information collected by him and submit reports as per the provisions of clauses (a), (b), (c) and (d) of sub-section (2) of section 5;

(viii) the licensee shall maintain accurate and true account of all the expenses incurred by him on the exploration operations and also the quantity and other particulars of all minerals obtained during such operations and their dispatch;

(ix) the licensee shall allow every officer authorized by the Central Government or the administering authority in this behalf to examine at any time accounts maintained and furnish the Central Government or the administering

authority or any other officer authorized by it in that behalf such information and returns as they may desire;

(x) the licensee shall allow any officer authorized by the Central Government or the administering authority in this behalf to inspect any exploration operations carried on by him;

(xi) the licensee shall give at least two months advance notice before commencement of the exploration work to the Ministry of Defence to ensure that the exploration work does not interfere with any Naval exercise in the area;

(xii) to undertake the exploration operations only Indian contracted companies should preferably be deployed. In case foreign contracted companies are to be deployed, prior approval of the Ministry of Defence shall be obtained and data shall be collected under supervision of Indian representatives of the licensee who shall ensure appropriate security safeguards;

(xiii) the exploration data should be processed in India and such processed and unprocessed data may be imparted to any foreign contractor only with prior approval of the Central Government;

(xiv) all vessels deployed for exploratory work by the licensee himself or contracted companies shall undergo Naval security inspection of the Indian Navy under the aegis of the Flag Officer Commanding-in-Chief of the concerned Naval Command, Flag Officer, Offshore Defence Advisory Group prior to their deployment. A clear one month's notice is to be given to facilitate clearance or inspection.

(xv) all vessels deployed for exploratory work by the licensee shall obtain prior clearance from the Directorate General of Shipping in terms of the relevant provisions of the Merchant and Shipping Act, 1958 (44 of 1958) and the rules made thereunder;

(xvi) intimation regarding awards of contracts to other contracted companies along with details of the contracts shall be forwarded to the Naval Headquarters (Directorate of Naval Intelligence), Ministry of Defence suitably in advance of the operations by the licensee providing six monthly long case on vessels deployment, by operating companies;

(xvii) appropriate visa shall have to be obtained from the competent authority for all foreign personnel on board the vessel and for this purpose, the contracted company shall provide a list of such foreign nationals to competent authority for prior visa authorization;

(xviii) the licensee shall take all precautionary measures for safety and security of all vessels or equipments deployed for exploration activities;

(xix) for issuing the marine safety warnings, the licensee shall immediately inform the Flag Officer, Offshore Defence Advisory Group and the administering authority the location indicating all vessels and equipments or machinery deployed at particular location and thereafter its new location as and when it is shifted.

(4) In the case of breach of any condition imposed on any holder of exploration licence by or under this rule, the administering authority may, by order in writing, cancel the licence or forfeit, in whole or part, the amount deposited by the licensee under rule 21 or do both.

Provided that no such order shall be made without giving the licensee a reasonable opportunity of being heard of stating his case."

41. It is, therefore, evident from the aforesaid statutory provision that once the grant is made as is evident from order dated 05.04.2011, all that remained to be done was execution of the exploration licence as provided

for under Rule 19 of the OAMC Rules. Rule 19 of the OAMC Rules reads as under:

*“19. Licence to be executed within three months – (1) Where on an application for an exploration licence, an **order has been made for grant of such licence**....., and if no such deed is executed within the said period due to any default on the part of the applicant, the administering authority **may revoke the order granting the licence** and in that event the exploration charges paid”* (emphasis supplied)

42. In fact, in the present case the original writ petitioners, who are respondents herein, had approached the Administering Authority to execute the exploration licence under the requisite forms in terms of Rule 19 of the OAMC Rules. However, due to pendency of matters before the Court, the Administering Authority did not proceed further. From a complete reading of the statutory provisions and the Rules framed thereunder, it is abundantly clear that it is after following certain statutory procedure and processes that the grant is made and the subsequent act of execution of licence is nothing but a ministerial act. Once the pre-requisites contemplated under Section 12 stood satisfied and the Administering Authority arrived at a decision in accordance to the provisions of Section 12, a right stood determined and vested in the respondents and then only the ministerial act of execution under Rule 19 was required to be followed. A perusal of the provisions of Rule 19, as is reproduced hereinabove, itself would indicate that before the stay of execution of the licence came under Rule 19, the grant was already made otherwise there was no question of providing a power to revoke the order granting the licence. If the applicant defaults in executing the licence, it is provided under Rule 19(1) that the Administering Authority may revoke the grant made. Similarly, the provisions of Section 12 which provides that

the Administering Authority may grant a licence to any person clearly indicates that once the statutory process contemplated for selection was followed, the order for grant is issued and once a grant is issued after following all these elaborate statutory provisions, it can, by no stretch of imagination, be considered as a letter of intent or a mere in-principle approval as canvassed by the appellant.

43. That apart, this issue can also be considered from a different perspective. Section 12 contemplates that there may be multiple applicants. In such a situation, the statute contemplates for rejection of an application by recording reasons and the unsuccessful applicant or any other person who may be aggrieved by such rejection is entitled to challenge the order. The very fact that the right accrued to a person to challenge the rejection of the application itself indicates that the grant is final and a right accrues for challenging the same by unsuccessful applicant; otherwise the cause of action would accrue to such a person only after execution of the licence deed under Rule 19. There is nothing in the Act or the Rules framed thereunder which suggest that an order under Section 12 rejecting an application is premature and can be challenged only after execution of the licence deed under Rule 19. The position of law clearly indicates that a party aggrieved by rejection of his application has to challenge the order passed under Section 12 read with Rule 16 and he has no right to challenge the execution of the licence under Rule 19. This is because the rights of the applicants are determined under Section 12 and what follows thereafter is only a ministerial act. At this stage, it would be appropriate to take note of a judgment of the Hon'ble Supreme Court in the case of **Edukanti Kistamma (Dead) through LRs. & Ors. vs. S.Venkatareddy (Dead) through LRs &**

Ors., (2010) 1 SCC 756 and in paras 23, 24 and 25 of the aforesaid judgment the Hon'ble Supreme Court has laid down the following principle:

“23. Undisputedly, the grant of a right or a permit/licence under any statutory provision requires determination of rights and entitlement of the parties. Once such a right is determined, the issuance of the order on the basis of such determination remains a ministerial act.

24. In Kundur Rudrappa v. Mysore Revenue Appellate Tribunal [(1975) 2 SCC 411 : AIR 1975 SC 1805] this Court examined the provisions of the Motor Vehicles Act, 1939 wherein Section 64 provided for an appeal against the grant or refusal of the grant of a permit on a route. In the said case, the appeal was filed only against the order of issuance. This Court held that such an appeal was not maintainable for the reason that issuance of permit was only a ministerial act, necessarily following the grant of the said permit and as no appeal was maintainable against the order of issuance. The order of the Tribunal was a nullity for want of competence. The Court further held that in such an eventuality, the permit granted to the other party could not have been cancelled and directed for issuance of the permit. Same view has been reiterated by this Court in Sharif Ahmad v. RTA [(1978) 1 SCC 1 : AIR 1978 SC 209].

25. In A.P. SRTC v. STAT [(1998) 7 SCC 353 : AIR 1998 SC 2621] this Court observed that actual issue of permit cannot be equated to the grant thereof, as both are separate things and issuance will be consequential to the grant of the permit. In fact, it is the grant and not issuance of the permit, which requires to be challenged.”

44. Similarly, in the case of M/s Gujarat Pottery Works Pvt. Ltd. vs. B.P. Sood and Ors., AIR 1967 SC 964 in para 7 the Hon'ble Supreme Court has held that grant of a lease is different from the formal execution of a lease. It has been held by the Hon'ble Supreme Court that it is sanctioning of the lease which amounts to grant of the lease and execution of a formal lease

deed thereafter is only compliance with the legal requirement to make the grant legally enforceable. That being the legal position, in this case the grant made by way of communication dated 05.04.2011 itself creates a right in favour of the respondents.

45. Further, in the case of **Bhushan Power and Steel Ltd. vs. SL Seal, Addl Secretary (Steel and Mines) State of Odhisa and Ors., (2017) 2 SCC 125** the Hon'ble Supreme Court while considering a question with regard to issue of grant of lease under the MMDR Act in para 22.3 has observed as under:

“22.3. Third category is that category of applicants where the Central Government had already communicated previous approval under Section 5(1) of the Act for grant of mining lease or the State Government had issued letter of intent to grant a mining lease before coming into force of the Amendment Act, 2015. Here again, the raison detre is that certain right had accrued to these applicants inasmuch as all the necessary procedures and formalities were complied with under the unamended provisions and only formal lease deed remained to be executed.”

46. From the aforesaid principle laid down and on analysis of the facts in the case of **Bhushan Power and Steel Ltd.** (supra), it is clear that in that case the lease had not been executed and only the recommendation for grant of lease was issued. However, the High Court accepted that rights had accrued on such grant being made. If we analyse the facts in the case of **Bhushan Power and Steel Ltd.** (supra), it would be seen that the Hon'ble Supreme Court has taken note of the procedures and formalities contemplated for grant of lease, namely, making of the application and acceptance of the same and held those to be the procedure and formalities

for grant. In the case in hand also, the formalities contemplated under Section 12 read with Rule 13, 14 and 16 have been complied with and only execution of a formal licence under Rule 19 remains. In view of the above, contention of the appellants that no vested right has accrued in favour of the respondents is unsustainable.

47. During the course of hearing, the appellants in support of the aforesaid contention had placed reliance on the judgments of the Hon'ble Supreme Court in the case of **Rishi Kiran Logistics Pvt. Ltd. vs. Board of Trustees of Kandla Port Trust and Ors.**, (2015) 13 SCC 233 and **Dresser Rand S.A. vs. BINDAL Agro Chem Ltd. and Ors.**, (2006) 1 SCC 751. In the case of **Rishi Kiran Logistics Pvt. Ltd.** (supra), the Hon'ble Supreme Court too arrived at a conclusion that in the facts and circumstances of that case, the letter of intent did not result in a concluded contract, relied on certain observations made in **Dresser Rand S.A.** (supra) and in para 43 [in the case of **Rishi Kiran Logistics Pvt. Ltd.** (supra)] observed as under:

“43. At this juncture, while keeping the aforesaid pertinent features of the case in mind, we would take note of “the Rules and Procedure for Allotment of Plots” in question issued by Kandla Port Trust. As per Clause 12 thereof the Port Trust had reserved with itself right of acceptance or rejection of any bid with specific stipulation that mere payment of EMD and offering of premium will not confer any right or interest in favour of the bidder for allotment of land. Such a right to reject the bid could be exercised “at any time without assigning any reasons thereto”. Clause 13 relates to “approvals from statutory authorities”, with unequivocal assertion therein that the allottees will have to obtain all approvals from different authorities and these included approvals from CRZ as well. As per Clause 16, the allotment was to be made subject to the approval of Kandla Port Trust Board/competent authority. In view of this material on record and factual position noted in

earlier paragraphs we are of the opinion that observations in Dresser Rand S.A. v. Bindal Agro Chem Ltd. [(2006) 1 SCC 751 : AIR 2006 SC 871] would be squarely available in the present case, wherein the Court held that: (SCC p. 773, paras 39-40)

“39. ... a letter of intent merely indicates a party's intention to enter into a contract with the other party in future. A letter of intent is not intended to bind either party ultimately to enter into any contract. ...

40. It is no doubt true that a letter of intent may be construed as a letter of acceptance if such intention is evident from its terms. It is not uncommon in contracts involving detailed procedure, in order to save time, to issue a letter of intent communicating the acceptance of the offer and asking the contractor to start the work with a stipulation that the detailed contract would be drawn up later. If such a letter is issued to the contractor, though it may be termed as a letter of intent, it may amount to acceptance of the offer resulting in a concluded contract between the parties. But the question whether the letter of intent is merely an expression of an intention to place an order in future or whether it is a final acceptance of the offer thereby leading to a contract, is a matter that has to be decided with reference to the terms of the letter.”

When the LoI is itself hedged with the condition that the final allotment would be made later after obtaining CRZ and other clearances, it may depict an intention to enter into contract at a later stage. Thus, we find that on the facts of this case it appears that a letter with intention to enter into a contract which could take place after all other formalities are completed. However, when the completion of these formalities had taken undue long time and the prices of land, in the interregnum, shot up sharply, the respondent had a right to cancel the process which had not resulted in a concluded contract.”

48. From the aforesaid, it is clear that in the facts of that case the letter of intent itself was held to be expression of an intention as it was hedged with conditions and it was stipulated that the final allotment would be made later on after obtaining certain clearances and completing certain formalities. It was held that in the facts of that case it was only a letter expressing an intention to enter into a contract. In the present case, the scenario is entirely different. In this case, the grant itself is made and it is not expression of an intention to make any grant. In fact, the judgments relied upon and the ratio in the cases of **Rishi Kiran Logistics Pvt. Ltd.** (supra) & **Dresser Rand S.A.** (supra) will not apply in the present case. In the cases relied upon by the appellants in this regard are all clearly distinguishable in view of the fact that in all those cases what was conveyed was an intention to make a grant and there were various pre-conditions which were to be fulfilled before the grant could be finalized or made. In the present case, all the pre-conditions were held satisfied before the grant was made and what remained was only the ministerial act of execution of the exploration licence.

49. We may also take note of the fact that the appellants did rely upon a judgment in the case of **Savita Rawat and Ors. Vs. State of M.P. and Ors.**, (2016) SCC Online MP 542. This judgment was also rendered in the backdrop of Section 10A of the MMDR Act; however, the said judgment stands impliedly overruled in view of the law laid down in the case of **Bhushan Power and Steel Ltd.** (supra). In fact, the distinction between grant of lease and licence has to be understood differently and should not be confused with execution of a lease or licence deed. In the facts of the present case, the grant was already made and the execution was what remained to be done. Accordingly, we are of the considered view that in the

facts and circumstances of the present case the contention of the respondents that the letter of intent did not create any right is not correct. Even though in this regard various other judgments were cited before us to indicate that the grant did not create any right but all the judgments relied upon are distinguishable on facts. They were all cases where on certain conditions to be fulfilled, the grant was made or the letter of intent was issued and the conditions still remained to be fulfilled, whereas in the present case all the conditions required to be fulfilled by the appellant were stipulated in Section 12 and the Rules framed thereunder like Rules 13, 14 and 16; and it is only after these conditions were fulfilled that the grants were made and what remained after making of the grant was only the formal act of execution of the licence deed.

50. It may also be relevant to take note of the fact that in the instant case the selection process was undertaken by the Administering Authority with the help of experts from the Indian Bureau of Mines, Geological Survey of India and the National Institute of Oceanography and the said process of selection and grant had attained finality as far as the writ petitioners, namely, respondents herein are concerned in view of the fact that certain findings in this regard recorded by the Division Bench of Bombay High Court at Nagpur on 17.09.2013 in W.P.(C) 1502/2011 titled **M/s. Rare (H) Minerals Pvt. Ltd. vs. Union of India** dismissed the challenge to the selection process which was ultimately upheld by the Hon'ble Supreme Court while dismissing the SLP on 31.03.2004. This is a case where the procedure adopted for evaluating the applications and the process done for selecting the eligible applicants for the grant of exploration licence had

attained finality and judicial acceptance after the SLP was dismissed by the Hon'ble Supreme Court.

51. That apart, the appellants are now seeking to make a submission and take a ground which is contrary to their own understanding and submissions made in the previous litigations. In terms of the internal discussions held by the departmental authorities, namely, in the minutes of the meeting brought on record under the Right to Information Act, it is evident that the departmental authorities understood that the blocks already stood granted and only execution of the licence remained. In fact, in the minutes of the meeting held on 14.07.2015 between IBM and the Secretary of Mines, the position is crystal clear if the discussion between the various officials with regard to Issue No.6 is analyzed. A perusal of the minutes of this meeting dated 14.07.2015 makes it abundantly clear that the departmental authorities understood that the blocks have already been granted and only execution of the licence remained. It is therefore clear from a complete reading of the statutory provisions and the manner in which the departmental officers understood the issue, that all were under the bona fide belief that the grant had been made and what remained was only the ministerial act of execution of the licence. Accordingly, we have no hesitation in holding that a right was created in favour of the writ petitioners/the respondents herein and it could not be annulled or taken away in the manner in which it was done. The contention of the appellants that what was granted or issued was only a letter of intent or an intention to make the grant is not correct. What was done is finalizing the grant itself, after scrutiny of claim made by various applicants, after following the statutory provisions contemplated under Section 12 read with Rules 13, 14 and 16; and after following such elaborate

statutory provisions once a grant is made, it can, by no stretch of imagination be construed to be only an expression of intention or an offer. The arguments in this regard have to be and are accordingly rejected.

52. The next point that was canvassed, even though it was not part of the reason indicated in the impugned order, was with regard to the public interest involved in the manner; and a more important question as to whether the annulment order was passed with an intention to re-auction the block. Whatever be the decision, even if it be a noble decision or a decision taken on paramount considerations of public interest but when a decision is challenged on the ground of it being taken in violation of the statutory rule, it is a well settled principle of law that any decision taken de hors the statutory provision is unsustainable. Mere public interest cannot be a ground for taking a decision in breach of statutory provisions. If such a process is permitted, the principle of rule of law would stand violated and any statutory provision would become dead letter if permitted to be ignored only on the ground of public interest. Such course of action would sound the death knell for the rule of law. In the case of **Dipak Babaria and Anr. vs. State of Gujarat**, (2014) 3 SCC 502 it has been held by the Hon'ble Supreme Court by referring to certain commentaries by Lord Bingham in his work titled "Rule of Law" that a public office, at whatever level it is functioning, must exercise power conferred on them in good faith, fairly and in conformity with the statutory provisions and the powers conferred thereto; and it cannot be done in derogation to the statutory provision. The power can be validly used in the manner as provided by the statute and not otherwise.

53. It is a well settled principle of law that when a statute provides a particular thing to be done in a particular manner then it is mandatory to do the same in the manner provided and not otherwise. This proposition of law has been laid down in the famous case of Taylor vs. Taylor, (1875) LR1 Ch D 426 and has been adopted by this Court in various cases right from Nazir Ahmad vs. King Emperor, AIR 1936 Privy Council 253 and followed consistently in various cases. It is the cardinal principle of law based on the rule adopted in Taylor vs. Taylor (supra) that if a statute has conferred a power to do an act and has laid down the method in which the power is to be exercised, the statute necessarily prohibits doing so in any manner other than the one prescribed.

54. In the present case, a perusal of the minutes of the meeting dated 14.07.2015 shows that the Secretary of the Department was seeking to place reliance on the amendment to the provisions of the MMDR Act incorporated in the year 2015 to suggest that exploration licence granted under the OAMDR Act should be cancelled and re-granted through auction. The said direction on the face of it stands vitiated as under the provisions of the OAMDR Act there is no procedure laid down providing for grant of licences by auction and no amendment as carried out in the MMDR Act has been undertaken in the OAMDR Act. It has to be assumed that Parliament was aware of the provisions of the OAMDR Act when it decided to amend the provisions of MMDR Act in the year 2015 by introducing the concept of auction of mining leases. However, no such amendment was carried out in the OAMDR Act. When the legislature itself has not thought it appropriate to amend the OAMDR Act, no executive authority, like the Secretary, can seek to frustrate the legislative intent by placing reliance on a provision of

another Act i.e. MMDR Act for implementing the statutory requirement under the OAMDR Act. The Hon'ble Supreme Court in the case of *In Re.: Natural Resources Allocation*, (2012) 10 SCC 1 has explained that auction is not the mandate of the Constitution and the Government can always take a decision to allocate resources without auction. The Hon'ble Supreme Court in the said case was taking note of the provisions of the unamended MMDR Act which provided for allocation of resources without auction and the legislative principle of allocation without auction was approved. Accordingly, the provisions of the OAMDR Act which does not prescribe for auction in the matter of grant of exploration licence cannot be ignored by following a procedure under the MMDR Act. In fact, in the present case, the statutory requirement under the OAMDR Act was complied with before the grant was made. That apart, even if the contention of the applicant to the effect that they propose to grant offshore blocks by auctioning in the future is accepted, the same can be permitted only if the OAMDR Act is amended and provides a procedure as has been provided under the MMDR Act. Even by amending the MMDR Act vide Section 10A, the provision for auctioning was made prospective and all grants granted prior to the amendment were treated to have created vested right and protected obviously for the simple reason that the legislature did not wish to affect vested or accrued right prior to amendment in the MMDR Act.

55. As far as the question of re-allocating exploration blocks through auction is concerned, even though during the course of hearing, it was indicated to us that there was no intention to auction blocks and only the Government itself planned to explore and mine in the area but from the affidavit filed by the respondent No.1/Union of India on 26.09.2017 in

W.P.(C) No.5734/2016 as also in the admission made by the learned counsel at the time of argument before the learned Single Judge, a categorical finding has been recorded by the learned Single Judge in para 80 of the impugned order which clearly shows that the impugned action was taken for starting the fresh process for grant through auction. In fact, this was one of the reasons why it was held that the appellants have been consistently trying to justify the annulment by highlighting the importance of auction route; and the learned Single Judge in para 96 notes the fact that the contention of the respondents are contradicted on their own admission that blocks will be re-granted through auction. In this regard, reference can also be made to the minutes of the meeting dated 14.07.2015 available on record which meeting was chaired by the Secretary (Mines) in which also there is a clear direction to re-grant the blocks through auction. In fact, the purpose for which the power was exercised by the authorities was to achieve an object not provided for in the OAMDR Act; and therefore, amounts to colourable exercise of power.

56. At this stage, we are constrained to express our opinion that the appellants have been consistently changing their stand before the Courts time and again, in total disregard to the statutory provisions. In this regard, the grounds raised in the present appeals vide ground (p) can be taken note of wherein again it is said that the impugned judgment rendered by the learned Single Judge proceeds on the erroneous premise that the notified block would be re-granted through auction. It was argued before us that the intention of re-grant indicated by the learned writ court is without basis. On the contrary, the ground now canvassed before us is that the OAMDR Act does not prescribe auction methodology; and that the auction theory is

an imagination which is not supported by records; and now a stand is taken that exploration licence and mining of atomic mineral cannot be allowed to be done by non-Government entities. The above stand taken now in these appeals clearly shows that the appellants have taken a U-turn on the issue. Initially, as is evident from the record, the reason was re-auction. Now, when the learned writ court has decided the issue based on evidence and material on record, it is said that it is the imagination of the Single Judge without any basis; and now a new stand with regard to mining of atomic mineral only by the Government is taken. This is nothing but an afterthought and we see no reason to accept the same as this was never the ground or reason indicated when the impugned action was taken on 05.04.2011. That apart, one more ground taken before us in the appeals is that it is a policy decision not to go ahead with the grant of exploration licence and to annul the notification dated 07.06.2010. However, no policy decision in this regard has been brought on record. How, when, where and in what manner such a policy decision was taken is not indicated and it is surprising that when the OAMDR Act clearly provides for grant of exploration licence, till the Act is amended pursuant to any such policy decision, any action in this regard would be contrary to law.

57. In view of all these factors, we have to record an inevitable conclusion that the contention of public interest now being canvassed by the appellants is nothing but an afterthought, which is also not reflected in the annulment order dated 30.06.2016. Had it been so, such a fact would have been available on record as one of the reasons for annulment of the notification. Accordingly, we have no hesitation in holding that no public interest was involved in cancelling the already granted exploration licence in

accordance with the requirement of law; and accordingly a detailed finding recorded by the learned writ court in para 100 of the impugned order which goes to hold that the impugned action was taken only with the intention of re-allocating the offshore blocks is correct; and the reasons given for its cancellation were nothing but an afterthought and manufactured reasons and the respondents have acted in violation to the statutory provision only to justify their illegal actions.

58. The learned writ court has also held the impugned action to be vitiated on account of it being pre-determined as well as on the ground of malice. In this regard, detailed findings have been recorded in paras 73 and 100 by the learned writ court. However, it is the case of the appellants that the findings recorded in this regard are without taking note of the minutes of the meeting dated 14.07.2015 and 30.06.2016. This contention of the appellants cannot be accepted. The learned writ court has meticulously analyzed each and every aspect of the matter and has recorded proper findings. In order to examine the correctness of the findings arrived at by the learned Single Judge, at this stage, certain facts with relevant dates which are available on record may be taken note of. On 05.04.2011, the order was issued and the appellants were informed about the grant made to them. However, in spite of the grant made, the licence deed could not be executed as the selection process was sub-judice in the High Court of Bombay, Nagpur Bench wherein all actions taken were made subject to the decision and were kept in abeyance. On 17.09.2013, the challenge to the selection process was dismissed; and thereafter on 31.03.2014 SLP was also dismissed by the Hon'ble Supreme Court, and therefore, in the minutes of meeting dated 14.07.2015 the IBM and the Secretary, Ministry of Mines were to consider

the execution of exploration licence and they had recorded the said decision. However, the direction of the Secretary ran contrary and by referring to the recent amendment to the MMDR Act, he directed for seeking legal opinion to re-allocate the exploration blocks through auction in-line with the amendment made to the MMDR Act and also recommended for necessary amendments in the relevant provisions of the OAMDR Act. Thereafter, on 18.11.2015, another meeting of the IBM chaired by the Secretary was held wherein also the observation was to dispose of pending applications on 64 offshore blocks on priority basis keeping in view the notifications already made. On 03.06.2016, the Secretary (Mines) gave a statement to the press which is said to have been reported on findings expressed on 03.06.2016, wherein suggestions were said to be sought from the Law Ministry with regard to extending the auctioning process as provided in the MMDR Act also for offshore minerals under the OAMDR Act. Thereafter, in June 2016, one of the applicants, M/s U.A. Minerals filed a writ petition before this Court seeking a mandamus for execution of the licence in-line with the order already passed by the Nagpur Bench of the Bombay High Court wherein notices were issued. It was thereafter that on 30.06.2016 that the impugned action nullifying the impugned action was passed.

59. It is in the aforesaid factual background, as was available on record, that the entire order was considered and the learned writ court has taken note of the fact that the IBM and the Ministry of Mines were clearly of the view that execution of exploration licence should be granted after dismissal of all the writ petitions except the one pending before the Andhra Pradesh High Court. However, for reasons which remained unexplained, opinion was sought from the Ministry of Mines and thereafter the impugned action was

taken. It was only after the intervention of the Secretary (Mines) that the change took place. Till then the statutory authorities were all along for implementing the notification dated 07.06.2010. In fact, the appellants' act of successfully defending the selection process in the High Court of Bombay, Nagpur Bench and other challenges before this Court is a clear indication of their intention. Even in the writ petition pending before the High Court of Andhra Pradesh, the IBM has filed the affidavit, which was part of the record before the writ court and in which a similar stand has been taken. Even in the press statement published on 03.06.2016 the intention of the Ministry to allocate the blocks through auction is evident; and it was after analyzing all these factors that a finding of legal malice was arrived at by the learned writ court and we see no reason to take a different view. That apart, the order dated 30.06.2016 cannot be sustained in law as it is the Administering Authority, namely, Controller General, IBM who is the statutory authority to whom power had been conferred by the Parliament under the OAMDR Act to take action. The said authority is required to independently take action, exercise discretion in terms of the provisions of the Act and he cannot be dictated to by the whims and opinion of another authority who under statute is not empowered to take any decision. A perusal of the minutes of the meetings dated 14.07.2015 and 18.11.2015 and consideration of the impugned action in the backdrop of the aforesaid clearly shows that the decision was not an independent decision of the Administering Authority but it was thrust upon him by the Secretary of the Ministry of Mines and therefore the order stands vitiated on this ground as well.

60. The Administering Authority is the statutory authority who has to take action and if he has taken the action by the dictates of the Secretary, the same stands vitiated as in view of the law laid down in the case of **Dipak Babaria & Anr.** (supra) and the observations made in the aforesaid case in paras 69 and 70. The said paras are reproduced hereinunder:

“69. Besides, the present case is clearly a case of dictation by the State Government to the Collector. As observed by Wade and Forsyth in the 10th Edn. of Administrative Law:

“If the Minister's intervention is in fact the effective cause, and if the power to act belongs to a body which ought to act independently, the action taken is invalid on the ground of external dictation as well as on the obvious grounds of bad faith or abuse of power.”

The observations by the learned authors to the same effect in the 7th Edn. were relied upon by a Bench of three Judges of this Court in Anirudhsinhji Karansinhji Jadeja v. State of Gujarat [(1995) 5 SCC 302 : 1995 SCC (Cri) 902] . In that matter the appellant was produced before the Executive Magistrate, Gondal, on the allegation that certain weapons were recovered from him. The provisions of TADA had been invoked. The appellant's application for bail was rejected. A specific point was taken that the DSP had not given prior approval and the invocation of TADA was non est. The DSP, instead of granting prior approval, made a report to the Additional Chief Secretary, and asked for permission to proceed under TADA. The Court in paras 13, 14, 15 has held this to be a clear case of “dictation”, and has referred to Wade and Forsyth on Surrender, Abdication and Dictation.

70. Respondent 5 had the courage to state that the notings of the Secretaries were inconsequential. As a beneficiary of the largesse of the Government, Respondent 5 could say that, but it is not possible for us to accept the same. In Tarlochan Dev Sharma v. State of Punjab [(2001) 6 SCC 260 : AIR 2001 SC

2524] what is observed by this Court is relevant for our purpose: (SCC p. 273, para 16)

“16. In the system of Indian democratic governance as contemplated by the Constitution, senior officers occupying key positions such as Secretaries are not supposed to mortgage their own discretion, volition and decision-making authority and be prepared to give way or being pushed back or pressed ahead at the behest of politicians for carrying out commands having no sanctity in law.”

A higher civil servant normally has had a varied experience and the Ministers ought not to treat his opinion with scant respect. If the Ministers want to take a different view, there must be compelling reasons, and the same must be reflected on the record. In the present case, the Secretaries had given advice in accordance with the statute and yet the Minister has given a direction to act contrary thereto and permitted the sale which is clearly in breach of the statute.”

61. Even though initially in the present case the Administering Authority wished to act in accordance with the statute and execute the licence, however, on the dictates of the Secretary he failed to act in consonance with the statutory provisions and committed a breach of the statutory provisions. That being so, the impugned order and the action is a nullity as the Administering Authority has acted beyond the power and the authority vested in him under Section 12 of the OAMDR Act. A statutory authority is required to act within the four corners of the statute and not otherwise. [See **DDA vs. Joint Action Committee, Allotment of SFS Flats**, (2008) 2 SCC 672; paras 65, 75 and 79.] At this stage, we may also take note of the legal position with regard to premature termination of an exploration licence, which power is vested under Section 7 of the OAMDR Act and this

power is available only with the Central Government and not with the Administering Authority, who has, in fact, issued the impugned order dated 30.06.2016. The Administering Authority under Section 7 can exercise powers only on the grounds mentioned therein, that also after providing an opportunity of hearing. Admittedly, the said power has not been exercised in the present case; and therefore, it has to be held that the action taken being contrary to the requirement of law and not in the manner as provided for under the law, stands vitiated. In terms of Section 12(2) read with Rule 69 of the OAMC Rules, the Administering Authority has power to terminate the exploration licence only in cases of failure to comply with the terms of the licence which is admittedly not the case in hand. That being so, the finding of the learned writ court that the power exercised by the Administering Authority is ultra vires the statute is clear and on this ground also in view of the law laid down in the case of **Kalabharti Advertising** (supra) and on account of legal malice, the entire action stands vitiated as held by the learned writ court.

62. We may further take note of the fact that there is sufficient material available on record, as held by the learned Single Judge, that the real intention for taking the impugned action was to re-grant the blocks after cancellation of the grant already made. The entire action was taken to achieve the objective as is indicated in the minutes of the meeting dated 14.07.2015 and to achieve this object, various grounds and reasons have been manufactured from time-to-time only to frustrate the claim of the respondents.

63. Finally, a ground was raised before us to say that exploration licence cannot be granted for atomic mineral in offshore areas. In fact, challenge is

made by contending that grant of exploration licence for atomic minerals to private companies is not permissible in offshore areas. In this regard, it may be noted that the OAMDR Act governs the grant of mining concession over offshore areas which admittedly includes CRZ-IV i.e. the territorial waters of the country (12 nautical miles). It is evident from Section 3 of the Act which governs grant of all minerals including atomic minerals; and therefore it is clear that there are no restrictions for grant of exploration licence even for such minerals under the OAMDR Act. The learned writ court has correctly held in the impugned order that the limited restriction is only at the stage of production lease which stage has not been reached and under this provision i.e. Section 6, only consultation is required with the Department of Atomic Energy before granting the production lease. In the present case, the issue pertains to exploration licence which is granted under Section 12 whereas a production lease is granted under Section 13 which stage has not arrived in the present case; and therefore the finding of the learned writ court in this regard is absolutely correct and reliance on Rule 18(1) is misplaced as this rule pertains to inclusion of those atomic minerals which are not part of the original exploration licence and therefore prior approval of the Department of Atomic Energy would be required to include such mineral in the licence deed. The contention of the learned Solicitor General that the notification dated 07.06.2010 was never meant for atomic minerals cannot be accepted for the following reasons:

- (a) The Offshore Areas Mining (Development and Regulation) Act, 2002 under Section 3(1) clearly states that the said Act shall apply to all minerals in the offshore area including any mineral prescribed in the notification issued under Clause (g) to

sub-section (1) of Section 2 of the Atomic Energy Act, 1962 except mineral oils and hydrocarbons.

- (b) The First Schedule of OAMDR Act specifies the royalties for various minerals to be found in offshore areas and this includes various minerals like ilmenite, rutile, zircon, etc. which form part of the list of atomic minerals in Part-B of the First Schedule to MMDR Act, 1957.
- (c) It is evident that the OAMDR Act always envisaged mining and exploration of rare minerals/atomic minerals such as ilmenite, rutile, zircon, etc. by private companies and to this effect specific provisions have been laid down in the Act and Rules framed wherein it is contemplated that when atomic minerals are found in the offshore area, what procedure has to be followed; particularly, seeking opinion of the Department of Atomic Energy and submitting six monthly report to the Secretary of the Department of Atomic Energy in terms of exploration lease deed 'Form K'. This clearly shows that exploration of atomic minerals was always directed for in the OAMDR Act.

64. The learned writ court in para 85 of the impugned order has held that the appellants have adopted a pick-and-choose policy since on the one hand they have directed mining of atomic minerals by private companies along the onshore limits of CRZ during the alternate CRZ notifications dated 06.01.2011 and 06.10.2007 were operational and based on this it is held that mining of atomic minerals is permissible with certain restrictions. Surprisingly, the appellants in support of their contention in this regard tried

to rely on the provisions of the Atomic Energy (Concession) Rules, 2016 which admittedly are not applicable to offshore area as these rules have been framed under MMDR Act for onshore mining concession. Even otherwise, the Atomic Mineral (Concession) Rules, 2016 do not provide for any restriction as is being alleged and Rule 3 of the said Rules merely provides the manner in which mining concession for atomic minerals can be granted.

65. During the course of hearing, the learned Solicitor General also tried to substantiate that the Beach-Sand Mining Policy implemented by the Government of India on 16.10.1998 has not been successful and therefore the Government does not wish to grant mineral concession for atomic minerals to private companies but the admitted fact is that the said policy of the Government of India is still in existence and nothing has been brought to our notice on the basis of which amendment to this policy of 1998 can be inferred.

66. The learned Solicitor General also sought to argue with regard to lack of provisions governing the handling of monazite found along with atomic minerals such as ilmenite, rutile, zircon, etc.; however we are informed that Rules in this regard are already in place, namely, the Working of Mines, Minerals and Handling of Prescribed Substances Rules, 1984, formulated under the Atomic Energy Act and in a case where private companies carry out mining in offshore areas, the said Rule would be applicable and the handling of a particular mineral has to be rooted or regulated by this Act. Finally, we may take note of the fact, which has already been considered by the learned writ court, that another CRZ notification has been issued on 18.01.2019 after the arguments were advanced before the writ court; and by this notification the Government has allowed exploration and mining of

atomic minerals notified under Part-B of the First Schedule of MMDR Act occurring as such or in association with other minerals in the territorial waters of the country i.e. upto 12 nautical miles as classified in CRZ-IVA. It is therefore clear that exploration and mining of named minerals including the atomic minerals is permissible. That being the factual position, there is no iota of doubt in our mind with regard to permissibility of exploration and mining of atomic minerals and associated minerals in the CRZ area by private companies; and the learned writ court has dealt with this issue in the right perspective.

67. At this stage, we would be failing in our duty if we do not refer to and take note of certain objections raised by the Union of India during the course of hearing in the form of an additional affidavit filed which was received by us in the midst of the hearing on 16.04.2019. Even though the additional affidavit pertains to most of the issues already dealt with by us in-extenso hereinabove, we may take note of the affidavit and deal with it based on the submissions made with regard to the said affidavit. The affidavit is sworn by the Director, Ministry of Mines and certain facts with regard to issuance of the grant in question and legal submissions are taken note of therein and it is stated that the averments and the documents filed along with this affidavit be considered as additional evidence; and this Court is requested to exercise its analogous power as may be available under Order 41 Rule 27 CPC, and to examine the reports and the documents filed before taking a decision. The submissions made in the affidavit can be categorized as under:

- (a) A Geological Survey of India's report indicating that the mineral resources in the area include "Monazite", an atomic mineral prescribed in the Schedule to the Atomic Energy Act,

1962 and it is indicated in the affidavit that mining of atomic minerals is prohibited. Certain observations made by the learned Single Judge in para 85 of the impugned order with regard to the appellant's practicing a pick-and-choose formula in granting 50 mining leases for atomic minerals to companies within CRZ area is indicated in the affidavit and it is said that most of the mining activities have been stopped since 2013.

- (b) Arguments with regard to grant of mineral concessions to private parties for mining and exploring atomic minerals is said to be in the process of being discontinued and only Government or Government companies would now be allowed to mine atomic minerals. Reference is made to Atomic Minerals (Concession) Rules, 2016 in this regard; and in para 7 of the additional affidavit it is indicated that the Central Government in exercise of the powers conferred under Section 4A(1) of the MMDR Act, in consultation with the State Governments, has taken a decision to the effect that it is now expedient and in the interest of regulation of mines and minerals development and conservation of mineral resources to terminate all existing mineral concessions of Beach Sand Minerals (Atomic Mineral) and the State Governments have also been directed to take action and a communication dated 01.03.2019 'Annexure A-2' has been filed along with the affidavit.
- (c) However, so far as territorial waters in offshore areas under the OAMDR Act are concerned, para 8 of the affidavit indicates that the question of prohibiting any operating right for atomic

minerals to private persons or companies is said to be under serious consideration of the Central Government in the interest of mineral development and conservation and in public interest keeping in view the strategic significance of atomic minerals. A proposal to stop grant of operating rights to private persons is said to be under active consideration and process of consultation is going on.

- (d) That apart, reference is made to the Central Bureau of Investigation report, the preliminary enquiry conducted, reporting of a Chief Vigilance Officer (Annexure A-3 dated 19.07.2011), the subsequent action taken and finally it is said that now the Government of India by a communication dated 01.04.2019 has intimated to the Central Bureau of Investigation (CBI) to re-investigate the matter; and the CBI vide communication dated 08.04.2011 has intimated to the Ministry of Mines that the CBI has re-opened the case.
- (e) It is also stated that the decision taken to grant two licence deeds to U.A. Minerals on 30.11.2017 after orders were passed by this Court on 09.11.2017 in W.P.(C) No.5734/2016 is a hasty decision; and therefore charge sheet has been issued to the officers concerned.
- (f) The learned Solicitor General invited our attention to the constitutional mandate of Article 297 of the Constitution, the law laid down by the Hon'ble Supreme Court in the case of Association of Natural Gas & Ors. vs. Union of India & Ors., (2004) 4 SCC 489, Reliance Natural Resources Ltd. vs.

Reliance India Ltd., (2010) 7 SCC 1 and *Natural Resources Allocation, In re., Special Ref. No.1/2012*, (2012) 10 SCC 1 to argue that when an issue involves grant of permission to mine natural resources which is the property of the public at large, interference into such matter should be made keeping in view the right of the public at large as the people of the entire country have a stake in the natural resources of the whole country and they should be dealt with in a just, fair and reasonable manner.

68. Accordingly, pointing out the importance of distribution of natural resources and the fact that Government is now contemplating to bring about drastic change in the procedure to lay down system of auctioning even under the OAMDR Act, prayer made is that when large scale irregularities are apparent from the face of the record and when the Vigilance Report and a CBI enquiry is already in progress, this Court in exercise of its extraordinary jurisdiction should not and cannot give a direction for specific performance in the matter of execution and entering into an exploration licence. The learned Solicitor General tried to indicate that looking to the manner in which the companies were set-up and the auction process undertaken, the entire selection process having been nullified by the Government, interference into the matter should not be made.

69. Even in the written submission filed on 23.04.2019, the importance of preventing illegal mining activities, the rampant corruption going on in the field of mining, particularly, in the States of Orissa, Karnataka, Goa and banning all mining activities by the Hon'ble Supreme Court in these cases have been highlighted and this Court is requested that looking to the high

standard of transparency and fair play to be practiced while permitting private parties to mine in a particular area, care should be taken by the Court while interfering in such matter. Detailed assertions have been made in the written submission on various aspects already dealt with by us hereinabove and it is sought to be argued out that the entire selection process stands rendered *void-ab-initio* in view of the findings recorded by the CBI on 19.10.2019 in its preliminary enquiry report. Reference is made to a self-contained note dated 28.03.2013 wherein the CBI had made the following remark:

“In view of the facts mentioned above, no misconduct was found on the part of any public servant of Indian Bureau of Mines in this case. However, it was found that no clear cut guidelines were formulated for short listing of the applicants and that the criteria for selection of the applicants for issuance of exploration licences was fixed after receipt of the applications, which is a serious procedural irregularity. It was also found that the Administering Authority carried out the entire process without doing adequate preparation before issuance of notification calling applications for the exploration licences. They also did not resort to get the DPR through an international consultant. This exercise was being done for the first time in India, and the above mentioned measures would have resulted in more systematic and transparent process in the selection of applicants for exploration licences.

Therefore, it is recommended that the Ministry of Mines may take suitable remedial action to rectify the irregularities that have come to fore in selection of applicants for offshore exploration licences so that enough precautions are taken in future to prevent occurrence of such irregularities.”

70. If we go through the aforesaid remark, it would be seen that the report exonerates all public servants of any kind of misconduct. It only speaks

about certain procedural irregularities, that also, in view of the fact that action is being taken for grant of offshore exploration licence for the first time after coming into force of the OAMDR Act. In fact, the aforesaid observation of the CBI in its preliminary enquiry report and the CVC in its report dated 04.07.2011 is nothing but a recommendation for future guidance. The contention of the appellants that this was indictment of the officers and of the procedure followed, is clearly misconceived and unacceptable, more so when this report was available even when the issue was considered by the Bombay High Court when it dismissed the writ petition on 17.09.2013 i.e. about 6 months after the aforesaid observations of the investigating agency.

71. We may take note of the fact that we have already dealt with most of the issues in the preceding paragraphs, particularly with regard to the CBI enquiry, the prohibition for grant of exploration licence in CRZ area, prohibition in granting rights for atomic minerals, etc. Now, in the affidavit the ground raised is that after the appeals were filed and even after the matter was heard on 29.03.2019 the Government has taken-up the matter with the CBI and recently on 08.04.2019 the CBI has agreed to re-open the matter. In our considered view, these factors are not at all relevant for deciding the lis in question for the simple reason that the grant of exploration licence is governed by the statutory provisions as contained in the OAMDR Act, Section 12 and 13 thereof; and what was impugned before us is the decision taken on 30.06.2016, the reasons for taking the said decision as it existed on the said date have been dealt with by us and we need not elaborate on them any further. Except for saying that, as held by the learned writ court, the Government had been changing its stands from

time-to-time and they now say that a communication has been received on 08.04.2019 whereby the CBI proposed to re-open the investigation. These are materials which did not lead to taking of the impugned action; and therefore at this stage these cannot be grounds for considerations in these appeals. That apart, the Vigilance Report filed by the appellants as 'Annexure A-3' is nothing but a preliminary investigation report dated 19.07.2011 submitted by the CVO, Indian Bureau of Mines based on some newspaper report reported on 04.07.2011 in the Economic Times; and after considering the methodology adopted for the grant in question, the background, the statutory provision, the proceedings of the Screening Committee, the analysis is made with regard to considering the applications submitted for exploration licence and it is only indicated that 5 companies were registered after the notification, 16 companies have been allotted exploration licence, addresses of most of the companies are similar and after narrating the facts as has been submitted before us, to say that all the companies are sham and illegally created only to get the grant in question, the findings recorded by the CVC read as under:

- *The concept of grant of offshore exploration licence for mineral bearing offshore blocks is new in the country. Ministry of Mines approved notification of 63 mineral bearing offshore blocks falling in Bay of Bengal & Arabian Sea with a time period of 3 months vide their letter No. 1/16/95-M.VI (Part III) dated 01.06.2010. The Controller General, IBM accordingly notified on 7th June, 2010 that the mineral bearing offshore blocks as contained in the schedule shall be available for grant of EL. Persons desirous of obtaining EL may apply for grant EL on or from 15th June, 2010 till 14th September, 2010. A time of 3 months was given which is quite a big*

time and which have led to registration of the companies, to suite the notification.

- *Further notification has no provision that created basis on which applications would have been scrutinized. However, the evaluation criteria based on 4 parameters as mentioned in the Section 12 of the OAM (D&R) Act, 2002 had been considered. This provided scope for discretion, as the evaluation sheet finalized by the Screening Committee is finalized in December 2010 and this leaves scope for discretion but again this evaluation sheet was placed on IBM website for two months before finalizing the award of blocks by IBM authorities and except one representation no other company had any objection to it.*
- *As per Section 6(a) of the OAM(D&R) Act, 2002, all the companies as defined in Section 3 of the Companies Act, 1956 are eligible to apply and therefore the OAM(D&R) Act, 2002 does not debar any such company to apply for exploration licence. As the offshore legislation and notification have no provision of Application fee and no restriction on number of block applications, all the applicant company have applied for any number of offshore blocks. Hence it was not possible for IBM – the administering authority to stop any person registering 5 companies.*
- *But IBM should have made thorough scrutiny of application by asking more details as per Rule 16(4) of the OAMCR, 2006; as the document with applications are very very preliminary in nature like for technical collaboration, a very very preliminary e-mail has been taken as evidence by the Screening Committee.*

In the light of above backdrop, no further comments can be given at this preliminary stage.”

72. The aforesaid report leads to nothing. The report itself speaks about the applicant companies having applied in accordance with the requirements

of the statute and the statute permitting the same. In spite of this report being available on record and even after the CBI enquiry as already indicated by us, the appellants have throughout, right from the year 2011 till the year 2016 i.e. for 5 years, been defending the selection process at various stages.

73. We may also take note of the fact that the alleged CBI enquiry in the past was taken note of by the learned Single Judge and even after filing of this appeal now, it is stated that on 01.04.2019 i.e. after the judgment was rendered by the learned Single Judge on 06.02.2019 and after this Court had issued notice on 29.03.2019, the CBI, it is said, is proposing to re-investigate the matter from the date of issuance of the notification dated 07.06.2010. We cannot lose sight of the fact that the whole process of evaluation and allotment has been subjected to strict judicial scrutiny not only by this Court but also by various Courts as is indicated by us hereinabove upto the Supreme Court and after a lapse of more than six years what is now being done is nothing but an act to prejudice the Court and we find lack of bona fides on the part of the appellants in dealing with the matter pertaining to re-opening of the CBI enquiry. Once, the matter has been taken up on the judicial side and after judicial scrutiny the entire selection process has been upheld, the act of the appellants in trying to point out that there are serious allegations against the officers and the proceedings conducted and therefore the CBI enquiry is being conducted is, in fact, a method to somehow indicate to this Court that all is not well and therefore an enquiry should be conducted. However, for arriving at such a conclusion, no material has been provided. We are even not aware as to whether the CBI has taken note of all the relevant factors before proceeding to consider re-investigation into the

matter. The bona fides of the appellants in filing the affidavit in this regard on 15.04.2019 and the act of re-opening the enquiry on 01.04.2019 for re-investigation into the matter may be a device to somehow get over all the judicial pronouncements made by various Courts including this Court with regard to the selection process and the issue in question. It prima facie seems to be an act that is not at all bona fide but a device or method to somehow deny benefit of Court's orders to the respondents.

74. Taking note of all these factors, we are not impressed by the grounds now raised in the additional affidavit. That apart, the concept of grant of natural resources, the mandate of Article 297 of the Constitution and the public interest involved in the matter are also not sustainable for the simple reason that they are based on proposals which are still to receive consideration by the competent authority of the Union of India and thereafter the Union of India may or may not amend the statutory provisions.

75. Learned Solicitor General had referred to the judgments of *Association of Natural Gas & Ors. vs. Union of India & Ors.*, (2004) 4 SCC 489 and *Reliance Natural Resources Ltd. vs. Reliance India Ltd.*, (2010) 7 SCC 1 to contend that Central Government is owner of the minerals and this Court while considering the issue should take note of the principles laid down in the aforesaid judgment as it is the Union of India on behalf of the public on whom the right to the mineral vests under Article 297 of the Constitution. In our considered view, so far as the present case is concerned, the OAMDR Act has been enacted by the Parliament for the first time and the issue of legislative competence is not involved in the matter and the provisions for distribution of natural resources pertaining to offshore area is governed by the statutory provisions contained therein and therefore

in the present case the issue of allocation will have to be considered in the backdrop of the statutory principle and as the allotment is based on the statutory provision, in our considered view, the judgments referred to may not be applicable.

76. For the present, it is sufficient for us to hold that as per the statutory provisions and the law existing, the selection process has been completed. The selection process was upheld by the Nagpur Bench of the Bombay High Court which was affirmed by the Hon'ble Supreme Court; and thereafter in two cases exploration licences have also been issued. Merely because some preliminary enquiry is proposed to be taken or some officers are being dealt with departmentally for their so-called mala fide actions, we see no reason to make any indulgence into the matter; and as already held by the learned writ court and approved by us, they are nothing but an afterthought or resonance by way of justification now given for justifying the actions of the appellants. The issue of mining of atomic minerals and the security concerns have been addressed in detail but so long as the OAMDR Act and the Rules framed thereunder permit grant of exploration licence or production licence on certain conditions for these minerals, we see no reason as to why in anticipation of some change in the statutory provision by the Government, which is still only at the stage of consideration, interference should be made by us. The question of pick-and-choose policy has also been considered by the learned writ court in detail and has been rejected.

77. A very interesting feature of the additional affidavit which was pointed out to us by Shri Tushar Mehta, learned Solicitor General at the time of hearing warrants consideration. In the additional affidavit, by highlighting safety reasons and public importance, it was sought to be

indicated that on account of prohibition or importance of preventing mining and exploration of atomic minerals, mining leases of majority of the lessees have been cancelled or stopped since 2013. However, if we see para 6 of the affidavit we find the respondents submit that the said 50 mining leases were granted in offshore areas under the MMDR Act. However, they do not say that they have been cancelled because mining of atomic minerals in area is prohibited; on the contrary, in the affidavit it is stated “Furthermore, due to mass scale illegalities the said mining activities in majority of the mines have been stopped since the year 2013”, meaning thereby that mining activity has been stopped in majority of cases but still in many cases out of 50 mining leases mining activities are being carried out and the affidavit does not say that the mining activities were stopped due to prohibition in atomic minerals being mined or explored but on account of large scale illegalities in the mining activities, meaning thereby that they have been stopped because of breach in the terms and conditions of the mining lease and nothing more.

78. In view of the aforesaid discussions and reasons, we are of the view that the writ court has rightly set aside the impugned action and the impugned order dated 30.06.2016; and we find no infirmity or illegality in the impugned judgment dated 06.02.2019 warranting any interference. The appeals are without any merit and accordingly dismissed without any order as to costs.

79. We may add that on 06.02.2019 the learned writ court had directed the appellants to execute the exploration licence of the respondents as per the procedure within four weeks from the date of receipt of the order. This order has not been given effect to till now. Accordingly, we direct the

Administering Authority to execute the exploration licences as directed by the learned writ court within a period of two weeks from today as the matter is pending since long due to pendency of cases before various Courts.

CHIEF JUSTICE

ANUP JAIRAM BHAMBHANI, J.

APRIL 25, 2019

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